

GENERAL PROVISIONS

281.210

- (b) The date of the instrument.
 - (c) The name or character of the instrument proved or acknowledged.
 - (d) The names of each of the parties thereto, as grantor, grantee or otherwise.
- During business hours, the record shall be open to public inspection without fee or reward.

2. Any person mentioned in subsection 1 who refuses or neglects to comply with the requirements of this section shall:

- (a) Be punished by a fine of not more than \$500; and
- (b) Be liable on his official bond in damages to any person injured by such refusal or neglect to the extent of the injury sustained by reason of the refusal or neglect mentioned in this subsection.

[1:32:1869; B § 315; BH § 2662; C § 2730; RL § 1098; NCL § 1559] + [2:32:1869; B § 316; BH § 2663; C § 2731; RL § 1099; NCL § 1560]—(NRS A 1967, 548)

WEST PUBLISHING CO.
Acknowledgment ⇌ 34.

WESTLAW Topic No. 12.
C.J.S. Acknowledgment § 68.

NRS 281.190 Unlawful withholding or destruction of records; penalties.

1. If an officer whose office is abolished by law, or who, after the expiration of the term for which he is appointed or elected, or after he has resigned, or when legally removed from office, willfully or unlawfully withholds or detains from his successor, or other person entitled thereto by law, the records, papers, documents or other writings pertaining or belonging to his office, or mutilates, destroys or takes away any such writing, the person so offending is guilty of a category D felony and shall be punished as provided in NRS 193.130.

2. The provisions of this section apply to any person who has the records, documents, papers or other writings in his possession, and willfully mutilates, withholds or detains them.

[63:108:1866; B § 2661; BH § 1698; C § 1844; RL § 2819; NCL § 4819]—(NRS A 1979, 1464; 1995, 1264)

WEST PUBLISHING CO.
Records ⇌ 22.

WESTLAW Topic No. 326.
C.J.S. Records §§ 73, 75, 76.

MISCELLANEOUS PROVISIONS AND PROHIBITIONS

NRS 281.210 Officers of state, political subdivision and University and Community College System of Nevada prohibited from employing relatives; exceptions; penalties. [Effective through June 30, 2009.]

1. Except as otherwise provided in this section, it is unlawful for any person acting as a school trustee, state, township, municipal or county officer, or as an employing authority of the University and Community College System of Nevada, any school district or of the state, any town, city or county, or for any state or local board, agency or commission, elected or appointed, to employ in any capacity on behalf of the State of Nevada, or any county, township, municipality or school district thereof, or the University and Community College System of Nevada, any relative of such a person or of any member of such a board, agency or commission who is within the third degree of consanguinity or affinity.

2. This section does not apply:

(a) To school districts, when the teacher or other school employee is not related to more than one of the trustees or person who is an employing authority by consanguinity or affinity and receives a unanimous vote of all members of the board of trustees and approval by the state department of education.

(b) To school districts, when the teacher or other school employee has been employed by an abolished school district or educational district, which constitutes a part of the employing county school district, and the county school district for 4 years or more before April 1, 1957.

(c) To the spouse of the warden of an institution or manager of a facility of the department of corrections.

(d) To the spouse of the superintendent of the Caliente youth center.

(e) To relatives of blind officers and employees of the bureau of services to the blind and visually impaired of the rehabilitation division of the department of employment, training and rehabilitation when those relatives are employed as automobile drivers for those officers and employees.

(f) To relatives of a member of a town board of a town whose population is less than 300.

3. Nothing in this section:

(a) Prevents any officer in this state, employed under a flat salary, from employing any suitable person to assist in any such employment, when the payment for the service is met out of the personal money of the officer.

(b) Disqualifies any widow with a dependent as an employee of any officer or board in this state, or any of its counties, townships, municipalities or school districts.

4. A person employed contrary to the provisions of this section must not be compensated for the employment.

5. Any person violating any provisions of this section is guilty of a gross misdemeanor.

[1:75:1925; A 1927, 43; 1935, 172; 1951, 22] + [2:75:1925; NCL § 4852] + [3:75:1925; NCL § 4853]—(NRS A 1957, 704; 1960, 369; 1963, 1178; 1967, 549; 1969, 227; 1973, 563, 1406; 1975, 554; 1977, 870; 1989, 1958; 1993, 374, 1550; 1995, 579; 1997, 1171; 1999, 174; 2001 Special Session, 234)

ADMINISTRATIVE REGULATIONS.

Supervision of relatives prohibited, NAC 284.375-284.377

WEST PUBLISHING CO.

Officers and Public Employees ⇐ 27, 29, 30.

WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 15 to 35, 89, 90.

ATTORNEY GENERAL'S OPINIONS.

County commissioner may not appoint relatives to work on state roads without full board approval. Individual county commissioner may not appoint relatives to work on state roads, but if an appointment is made by the full board, there is no violation of ch. 19, Stats. 1915 (cf. NRS 281.210). AGO 46 (12-29-1915)

Employment by county commissioners of person within the prohibited degree of affinity violates the statute. Employment by a board of county commissioners of one who is related to any

member of the board within the degree prohibited by ch. 19, Stats. 1915 (cf. NRS 281.210), is a violation of that statute. AGO 120 (6-1-1922), cited, AGO 124 (6-26-1922)

No appointment of employee within the prohibited degrees of affinity is allowed even if the related board member votes against the appointment. Wherever the power of appointment subsists in a board, no valid appointment may be made by that board of an employee within the prohibited degrees of consanguinity or affinity, even though that member of the board so related did not vote or voted against the appointment. Ch. 19, Stats. 1915 (cf. NRS 281.210). AGO 125 (6-26-1922)

County officer cannot employ relative as deputy even though deputy is uncompensated. County officer cannot employ a relative as a deputy even though the deputy serves without compensation. AGO 7 (1-23-1923)

GENERAL PROVISIONS

281.210

Employment of brother of board member is prohibited. Employment by a state board of the brother of a member of a board is a violation of ch. 75, Stats. 1925 (cf. NRS 281.210), which prohibits employment of relatives within the third degree of consanguinity or affinity. AGO 265 (6-8-1927)

Employment of cousin of wife of justice of supreme court not prohibited. Employment of a cousin of the wife of a justice of the supreme court does not violate ch. 75, Stats. 1925 (cf. NRS 281.210) prohibiting employment of relatives within the third degree of consanguinity or affinity because a cousin is of the fourth degree. AGO 301 (3-12-1928)

Employment by state commission of relatives of member is prohibited even though commission is uncompensated. Ch. 75, Stats. 1925 (cf. NRS 281.210), which prohibits employment of relatives within the third degree of consanguinity or affinity, prohibits employment by a state commission of such relatives of a member. The fact that the members of a commission serve without compensation is irrelevant. AGO 291 (1-5-1928)

Continued employment of teacher by school board when teacher marries member of board is not prohibited. Ch. 75, Stats. 1925 (cf. NRS 281.210), does not prohibit continued employment of a teacher by the school board when the teacher later marries the daughter of a member of the school board, though the relationship created is within the prohibited degree of consanguinity or affinity. AGO 47 (10-3-1929)

Statute has no application when teacher's employment is consummated by law. Ch. 151, Stats. 1929, repealed by Stats. 1947, p. 91 (cf. NRS 391.3196), automatically reemploys a teacher when the school board fails to notify the teacher as provided. The nepotism law (see NRS 281.210) has no application under these circumstances, because employment is consummated by law. AGO 384 (8-25-1930)

Relationship of wife to her husband's aunt's husband not within prohibited degree of affinity. Relationship of a wife to her husband's aunt's husband is not within the degree of consanguinity or affinity of NCL § 9862 (see NRS 281.210) which would prevent employment. AGO 79 (6-13-1932)

If teacher marries school trustee after contracting with the school, she is not in violation of statute. If a teacher signs a contract with a school board and subsequently, during the period of the contract, marries one of the trustees, her contract is not in violation of the nepotism law. AGO 196 (12-5-1935)

Purpose of statute is to prevent patronage by reason of relationship rather than merit. Purpose of the nepotism law is to prevent employment by public officers and boards of relatives within the degree of relationship prescribed by

statutes, and thus prohibit bestowal of patronage by reason of the relationship rather than merit. AGO 196 (12-5-1935)

Statute is disabling legislation that will not be extended to relationships not enumerated. Statutes similar in nature to NRS 281.210 have been described as disabling legislation and as being against the common right of the individual, and, if they enumerate a disqualifying relationship, they will not be extended to apply to others not enumerated. AGO 196 (12-5-1935)

"Widow" as used in statute has its ordinary meaning. Use of the word "widow" in NCL § 4851 (cf. NRS 281.210) seems to be the ordinary or general use of that word and includes only such persons as are generally contemplated under that word. The word "widow" generally means a woman who has lost her husband by death and has not taken another husband. AGO 353M (8-24-1942)

County officer may appoint wife as deputy if he pays her salary. County officer may appoint his wife as a deputy so long as he pays her salary. AGO 363M (12-4-1942)

If successful bidder for county work is son-in-law of commissioner, acceptance of bid would violate statute. If the successful bidder for county work is the son-in-law of a county commissioner, acceptance of the bid would be a violation of the nepotism law. AGO 588 (3-16-1948)

Purpose of statute is to prevent patronage of relatives regardless of qualifications. It seems clear that the purpose of the nepotism law is to prevent the bestowal of patronage by public officers in employing their relatives regardless of the qualifications of the employee. AGO 203 (9-10-1952)

Employment of teacher who is wife of school superintendent is not violation of statute. Employment of a teacher who is the wife of the school superintendent and works under his direction is employment by the board of trustees and thus is not a violation of the nepotism law (NRS 281.210). AGO 367 (3-24-1958)

Wife cannot be assistant superintendent of county hospital if husband is on board of trustees. Wife cannot serve as an assistant superintendent of the county hospital if her husband is a member of the board of hospital trustees, notwithstanding the husband refrains from official action on matters affecting the wife's employment or salary. AGO 430 (12-3-1958)

Person employed at time of election of his relative to appointing authority may continue in such employment. Under NRS 281.210, which prohibits employment by the state or a political subdivision of any person related within the third degree of consanguinity or affinity to the appointing authority or as a member thereof, a person who was employed at the time of the election of his relative to the appointing authority may continue

281.210

GENERAL PROVISIONS

in such employment. AGO 178 (8-31-1960), cited, CEO 99-06 (1-24-2000), AGO 2001-28 (9-26-2001)

Statute does not affect appointment to board of directors of power district. NRS 281.210, which prohibits officials of the State of Nevada and enumerated political subdivisions, not specifically naming the power or special districts, from employing relatives, does not affect appointment to the board of directors of a power district, because under former NRS 312.040, a district is not a municipality, and the nepotism statute which restricts freedom of employment should be strictly construed. Maxim inclusio unius est exclusio alterius applies. AGO 210 (3-15-1965)

Statute not applicable to contract between county commissioners and county surveyors to perform designated services. NRS 197.110 and 281.230, which prohibit personal interest or benefit to a public officer from a public contract, and NRS 281.210, which prohibits employment of relatives by public officers, do not apply to a contract between county commissioners and a county surveyor to perform designated services for a county, because such contract is authorized by NRS 255.060. AGO 215 (4-12-1965)

Statute applies to department head of state institution. NRS 281.210, prohibiting employment of relatives within the third degree of consanguinity, applies to the department head of a state institution or organization to whom the power to hire and fire has been delegated by a superior officer, even though the ultimate power rests with the superior. AGO 656 (4-9-1970), cited, AGO 2000-26 (11-1-2000)

Under statute, individual within enumerated class cannot employ or recommend for employment relative within prohibited degree of affinity. Under NRS 281.210, an individual within a class enumerated in statute cannot employ, reemploy or recommend for employment a relative within the third degree of consanguinity or affinity to himself or other individual within the same enumerated class if such an individual has effective hiring power, regardless of where the ultimate hiring power lies. AGO 147 (10-1-1973)

Board of general improvement district is subject to statute. The board of a general improvement district (see NRS ch. 318) is subject to the provisions of NRS 281.210 prohibiting the employment of relatives of board members. Board cannot insulate itself from operation of the statute by hiring an employee who would then hire all other employees for the district. AGO 79-B (4-23-1979), cited, AGO 2000-26 (11-1-2000)

Antinepotism law prohibits planning director of county from hiring daughter of county manager. The provisions of NRS 281.210 prohibit the hiring of persons who are within the third degree of consanguinity or affinity from certain other persons and authorities who are entrusted with the power to hire. Where a county manager had hired a planning director to supervise the planning department of the county and had delegated hiring authority to the planning director, the fact that the county manager remained an employing authority for the purposes of NRS 281.210 and possessed continuing control over the planning director meant that the county manager was not insulated against the prohibition set forth in NRS 281.210. Thus, NRS 281.210 prohibited the planning director from hiring the daughter of the county manager, notwithstanding the fact that the county manager had delegated hiring authority to the planning director. AGO 2000-26 (11-1-2000)

School district board of trustees not prohibited from appointing to the board a person who is related within the third degree of consanguinity or affinity to an existing school district employee. The underlying purpose of anti-nepotism statutes is to prevent the evil of selecting public employees on the basis of kinship rather than merit. In keeping with this purpose, NRS 281.210 prohibits the initial hiring of a person within the prohibited degree of consanguinity or affinity but does not prohibit the continued employment of an already-hired employee. Thus, NRS 281.210 does not prohibit the board of trustees of a county school district from appointing to the board an individual who is related within the third degree of consanguinity or affinity to an existing school district employee. AGO 2001-28 (9-26-2001)

COMMISSION ON ETHICS OPINIONS.

Section not applicable where employment of relative of member of utility district board preceded member's election. Where a member of the board of a utility district who also serves as an officer of the district is responsible, when the president of the district is unavailable, for supervising the job performance and responsibilities of a relative who is an employee of the district, the commission on ethics found that NRS 281.210 was not applicable because the relative had been employed by the district before the member was elected to the board. Abstract, CEO 99-06 (1-24-2000)

NRS 281.210 Officers of state, political subdivision and University and Community College System of Nevada prohibited from employing relatives; exceptions; penalties. [Effective July 1, 2009.]

1. Except as otherwise provided in this section, it is unlawful for any person acting as a school trustee, state, township, municipal or county officer, or as an em-

employing authority of the University and Community College System of Nevada, any school district or of the state, any town, city or county, or for any state or local board, agency or commission, elected or appointed, to employ in any capacity on behalf of the State of Nevada, or any county, township, municipality or school district thereof, or the University and Community College System of Nevada, any relative of such a person or of any member of such a board, agency or commission who is within the third degree of consanguinity or affinity.

2. This section does not apply:

(a) To school districts, when the teacher or other school employee is not related to more than one of the trustees or person who is an employing authority by consanguinity or affinity and receives a unanimous vote of all members of the board of trustees and approval by the state department of education.

(b) To school districts, when the teacher or other school employee has been employed by an abolished school district or educational district, which constitutes a part of the employing county school district, and the county school district for 4 years or more before April 1, 1957.

(c) To the spouse of the warden of an institution or manager of a facility of the department of corrections.

(d) To the spouse of the superintendent of the Caliente youth center.

(e) To relatives of blind officers and employees of the bureau of services to the blind and visually impaired of the rehabilitation division of the department of employment, training and rehabilitation when those relatives are employed as automobile drivers for those officers and employees.

3. Nothing in this section:

(a) Prevents any officer in this state, employed under a flat salary, from employing any suitable person to assist in any such employment, when the payment for the service is met out of the personal money of the officer.

(b) Disqualifies any widow with a dependent as an employee of any officer or board in this state, or any of its counties, townships, municipalities or school districts.

4. A person employed contrary to the provisions of this section must not be compensated for the employment.

5. Any person violating any provisions of this section is guilty of a gross misdemeanor.

[1:75:1925; A 1927, 43; 1935, 172; 1951, 22] + [2:75:1925; NCL § 4852] + [3:75:1925; NCL § 4853]—(NRS A 1957, 704; 1960, 369; 1963, 1178; 1967, 549; 1969, 227; 1973, 563, 1406; 1975, 554; 1977, 870; 1989, 1958; 1993, 374, 1550; 1995, 579; 1997, 1171; 1999, 174; 2001 Special Session, 234, 235, effective July 1, 2009)

NRS 281.221 Contracts in which state officer has interest prohibited; exceptions; penalties.

1. Except as otherwise provided in this section, it is unlawful for any state officer who is not a member of the legislature to:

(a) Become a contractor under any contract or order for supplies or other kind of contract authorized by or for the state or any of its departments, or the legislature or either of its houses, or to be interested, directly or indirectly, as principal, in any kind of contract so authorized.

(b) Be interested in any contract made by him or to be a purchaser or interested in any purchase under a sale made by him in the discharge of his official duties.

2. Any member of any board, commission or similar body who is engaged in the profession, occupation or business regulated by the board, commission or body

281.230**GENERAL PROVISIONS**

may supply or contract to supply, in the ordinary course of his business, goods, materials or services to any state or local agency, except the board or commission of which he is a member, if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

3. A full- or part-time faculty member in the University and Community College System of Nevada may bid on or enter into a contract with a governmental agency, or may benefit financially or otherwise from a contract between a governmental agency and a private entity, if the contract complies with the policies established by the board of regents of the University of Nevada pursuant to NRS 396.255.

4. A state officer, other than an officer described in subsection 2 or 3, may bid on or enter into a contract with a governmental agency if the contracting process is controlled by rules of open competitive bidding, the sources of supply are limited, he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

5. Any contract made in violation of this section may be declared void at the instance of the state or of any other person interested in the contract except an officer prohibited from making or being interested in the contract.

6. Any person violating this section is guilty of a gross misdemeanor and shall forfeit his office.

(Added to NRS by 1977, 1109; A 1993, 2241; 1995, 689; 2001, 1627)

REVISER'S NOTE.

This section substantially reenacts former NRS 281.220 and 281.235, which was repealed by section 47 of chapter 540, Stats. 1975, in connection with new provisions later declared unconstitutional (*Dunphy v. Sheehan*, 92 Nev. 259 (1976)).

WEST PUBLISHING CO.

Officers and Public Employees ⇐ 28, 110, 121.

WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 34, 197 to 204, 255 to 259.

ATTORNEY GENERAL'S OPINIONS.

Members of local employee-management relations board appointed by governor are subject to prohibitions of statute. Members of a local government employee-management relations board appointed by the governor pursuant to NRS 288.080 are nonlegislative state officers subject to the prohibitions of NRS 281.221 against contracting or being interested as principals in any contract with the state or any of its agencies. AGO 218 (9-20-1977)

NRS 281.230 Unlawful commissions, personal profit and compensation of public officers and employees; penalties; payment of commission, profit or compensation to public employer.

1. Except as otherwise provided in this section and NRS 218.605, the following persons shall not, in any manner, directly or indirectly, receive any commission, personal profit or compensation of any kind resulting from any contract or other significant transaction in which the employing state, county, municipality, township, district or quasi-municipal corporation is in any way directly interested or affected:

(a) State, county, municipal, district and township officers of the State of Nevada;

(b) Deputies and employees of state, county, municipal, district and township officers; and

(c) Officers and employees of quasi-municipal corporations.

2. A member of any board, commission or similar body who is engaged in the profession, occupation or business regulated by the board, commission or body may, in the ordinary course of his business, bid on or enter into a contract with any governmental agency, except the board or commission of which he is a member, if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

3. A full- or part-time faculty member or employee of the University and Community College System of Nevada may bid on or enter into a contract with a governmental agency, or may benefit financially or otherwise from a contract between a governmental agency and a private entity, if the contract complies with the policies established by the board of regents of the University of Nevada pursuant to NRS 396.255.

4. A public officer or employee, other than an officer or employee described in subsection 2 or 3, may bid on or enter into a contract with a governmental agency if the contracting process is controlled by rules of open competitive bidding, the sources of supply are limited, he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

5. A person who violates any of the provisions of this section shall be punished as provided in NRS 197.230 and:

(a) Where the commission, personal profit or compensation is \$250 or more, for a category D felony as provided in NRS 193.130.

(b) Where the commission, personal profit or compensation is less than \$250, for a misdemeanor.

6. A person who violates the provisions of this section shall pay any commission, personal profit or compensation resulting from the contract or transaction to the employing state, county, municipality, township, district or quasi-municipal corporation as restitution.

[1:107:1927; NCL § 4855] + [2:107:1927; NCL § 4856] + [3:107:1927; NCL § 4857]—(NRS A 1957, 363; 1963, 477; 1965, 410; 1967, 550; 1975, 932; 1977, 1110; 1979, 1464; 1987, 1460; 1989, 1441; 1991, 1593; 1993, 2242; 1995, 689, 1264; 2001, 1628, 2287)

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Officers and Public Employees ¶ 98.

WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 224, 242.

ATTORNEY GENERAL'S OPINIONS.

Justice of the peace cannot contract with county commissioners for construction of a building in his township. A justice of the peace cannot enter into a contract with county commissioners for the construction of a building within his township. AGO 329 (4-30-1954)

State planning board not prohibited from contracting with the state boards of architecture, professional engineers or contractors for professional service in public works as long as no improper advantage is involved. The former provisions of NRS 281.220 and NRS 281.230, which prohibit public officers from entering into or having an interest in public contracts, do not prohibit the state planning board from contracting with individual members of the state board of architecture, state board of registered professional engineers or state contractors' board for professional service in public works contracts where no improper advantage is involved, because the prohibition was not intended to place such persons, who perform occasional gratuitous civil service, at a disadvantage in their own field of endeavor. AGO 253 (11-2-1961)

Statute and the nepotism law not applicable to a contract between county commissioners and county surveyor to perform designated services. NRS 197.110 and 281.230, which prohibit personal interest or benefit to a public officer from a public contract, and NRS 281.210, which prohibits employment of relatives by public officers, do not apply to a contract between county commissioners and a county surveyor to perform designated services for the county, because such a contract is authorized by NRS 255.060. AGO 215 (4-12-1965)

Proposed contract between board of county commissioners and business that is owned in part by member of board: Board not precluded from approving contract; member of board subject to discipline. Where a board of county commissioners proposes to contract with a business of which one of the members of the board is a partial owner, the board would not be specifically precluded from approving the contract, but the board's approval of the contract would place the member of the board who is the partial owner of the business in violation of NRS 332.155, subjecting him to removal from office. In addition, if the member of the board who is the partial owner of the business enjoyed a profit or compensation flowing from the contract, he would also be in violation of NRS 281.230(1) and 281.505(1). AGO 2001-19 (7-5-2001)

COMMISSION ON ETHICS OPINIONS.

Substitute teacher prohibited from simultaneously holding a position as a school district trustee. The commission on ethics opined that NRS 281.230, which is designed to keep public and private interests separate so that there is no question, hint or temptation for a public officer to compromise his public duty to benefit his private interests, prohibits a substitute teacher for a school district from simultaneously holding the position of trustee of the school district because, as a school board trustee, the teacher would be in the position to control the funds allocated for the substitute teacher program for the school district and would thereby have the opportunity and means to benefit himself financially, which would create the appearance of impropriety. Therefore, the commission stated that the teacher must resign his employment with the school district or not accept a seat on the school board. Abstract, CEO 98-71 (1-3-2000), cited, Abstract, CEO 02-01 (3-21-2002)

Member of city council prohibited from serving as compensated executive director of nonprofit redevelopment corporation that receives funding from city. The commission on ethics found that it would be a violation of NRS 281.230 for a current member of a city council to serve simultaneously as the compensated executive director of a nonprofit redevelopment corporation if any of the funding of the nonprofit corporation came directly or indirectly from the city because: (1) NRS 281.230 clearly states that public officers cannot be directly or indirectly compensated from any transaction in which the employing governmental entity is interested and affected; and (2) the redevelopment of natural resources is an issue regarding which the city would have an interest because the issue directly relates to the redevelopment project in the master plan of the city. However, the commission stated that NRS 281.230 would not prohibit the public officer from serving as the executive director of the nonprofit corporation if he was not compensated by the corporation. Abstract, CEO 99-09 (1-24-2000)

Solicitation of computer sales contracts by member of city council from clients in private sector allowed. The commission on ethics opined that NRS 281.230 did not prohibit a member of a city council from working as a sales representative on a commission basis for a business that sells computer equipment and services as long as the member only solicited sales contracts from clients in the private sector and did not solicit contracts from any city, county or other local governmental entity. Abstract, CEO 99-10 (1-24-2000)

Employment of member of city council by company that transacts de minimus amount of business with city allowed. Where a member of a city council is employed by a company that transacts approximately 2/10 of 1 percent of its business with the city, the commission on ethics found that, based on the de minimus nature of the transactions, the member was not directly or indirectly being compensated by the business transactions between

the city and the company as prohibited by NRS 281.230 and that her continued employment with the company would not violate NRS 281.230 as long as: (1) the amount of business that the company transacts with the city remains de minimus; and (2) the member does not have any control over the purchasing decisions by the city or the selling decisions by the company. Abstract, CEO 99-13 (1-29-2000)

Employee of state dairy commission may operate part-time business providing services to special fuel users. The commission on ethics found that a public employee who is employed by the state dairy commission as an area supervisor would not violate any ethical provision by opening a small part-time business out of his home that would provide services to special fuel users inside and outside Nevada but would not provide such services to any person or business related to the dairy industry. (See NRS 281.230 and 281.481.) In re French, CEO 99-22 (1-29-2000)

County commissioner may bid on contracts regarding which the county is not interested or affected. Where a member of a rural board of county commissioners who is the president and owner of a "widget" company desires to bid on certain contracts offered by the county commission of which he is a member, the county regional transportation commission and other political subdivisions of the county, the commission on ethics opined that the member is not prohibited from bidding on contracts offered by governmental entities outside of the county or on projects offered by the state as long as the county would not be in any way interested or affected, directly or indirectly by those contracts. (See NRS 281.230 and 281.505.) Abstract, CEO 99-27 (5-8-2000)

Contracts with a county on which a county commissioner may bid. Where a member of a rural board of county commissioners who is the president and owner of a "widget" company desires to bid on certain contracts offered by the county commission of which he is a member, the county regional transportation commission and other political subdivisions of the county, the commission on ethics stated that the commissioner may bid on contracts for supplying "type C widgets" in the county because: (1) the bidding process was open and competitive; (2) the commissioner would not be involved in opening, considering or accepting the offers; (3) the commissioner would not be involved in developing contract plans and specifications; and (4) the sources of supply for "type C widgets" were limited because the commissioner's company operates the only manufacturing plant in a 30-mile radius that makes "type C widgets." However, because there is local competition for manufacturing "type B widgets" and therefore the sources of supply for "type B widgets" are not limited, the commissioner may not bid on contracts with the county for supplying those "widgets" unless the commissioner's company is supplying a particular grade of "widgets" that is limited in availability and the design

specifications in the request for proposals is not tailored to fit the needs of the commissioner's company. The commissioner may bid on contracts with the county for "widgets" for which the sources of supply are not limited only if the commissioner has removed himself completely from the operations of the company and does not receive any direct or indirect compensation from the company. (See NRS 281.230 and 281.505.) Abstract, CEO 99-27 (5-8-2000)

Ownership of indoor shooting range by county sheriff. Where the county sheriff is one of the owners of a closely held corporation that operates an indoor shooting range and training facility in the county and, as sheriff, has the ability to determine the annual qualifications for his deputies regarding firearms training, the commission on ethics opined that to comply with NRS 281.230 the sheriff must not: (1) solicit contracts from law enforcement agencies for the use of his shooting range; (2) have any involvement in responding to or opening or accepting bids submitted by law enforcement agencies for the use of the shooting range; and (3) profit from any activities, whether service or supplies, with the county sheriff's department. In re Harris, CEO 99-32 (12-6-1999), cited, In re Harris, CEO 99-64 (6-15-2000)

Board may select a bid from a trustee's employer pursuant to statutory exception. Where a member of a board of trustees of a district is employed as the sole representative for the local branch office of an investment firm and the investment firm is one of the candidates that submitted a bid to underwrite a bond offering for the district, the commission on ethics opined that NRS 281.230 and 281.505 did not prohibit the board from selecting the bid from the trustee's employer because the contracting process was controlled by the rules of open competitive bidding, the sources of supply were limited, the trustee refrained from participation in contract plans or specifications and the trustee abstained from opening, considering or accepting offers. The commission noted that: (1) the board made significant efforts to avoid soliciting the trustee's assistance with the bond issuance process; (2) at each step of the bond issuance process the trustee sought advice from the bond counsel to ensure there was no conflict of interest or appearance of impropriety; and (3) there was no evidence that the member or anyone else on the board attempted to tailor the requirements of the proposal to benefit the member or his employer because the specifications of the request for proposals had been made with the advice of bond counsel and the financial consultant with whom neither the member nor his employer had had previous dealings. Abstracts, CEO 99-34, 99-35 (2-24-2000)

Statute establishes an objective standard of conduct. Noting that NRS 281.230 addresses situations broader than the obvious one where a public officer attempts to enter into a contract directly with his or her employing governmental entity, the commission stated that the apparent

intent of NRS 281.230 was to prevent public officers and employees from becoming involved in situations generating conflicts between public and private interests so as to preserve and enhance impartiality of public officers and employees and faith in the integrity of government. The commission explained that a conflict of interest is a situation requiring a public officer to serve two masters, which presents a potential, rather than an actuality, of wrongdoing and, because the focus of ethics laws is to avoid even the potential danger of wrongdoing, the ethics laws identify certain types of conflicts of interest and prohibit conduct by public officials that would allow these conflicts to occur. The commission stated that NRS 281.230 does not specify that for a violation to occur there must be actual corruption or that there be any actual loss suffered by the public entity as a result of the public officer's conflict of interest. Rather, the danger is presumed to exist even if the public officer actually performs bona fide services for his outside income. Thus, the commission interpreted NRS 281.230 as establishing an objective standard of conduct: if a public officer or employee fails to meet that objective standard, the officer or employee violates the statute, regardless of subjective intent. The commission reiterated that the statute is more concerned with what might have happened in a given situation than with what actually happened and it attempts to prevent honest government agents from succumbing to temptation by making it illegal for them to enter into relationships that are fraught with temptation. In light of the legislative intent behind NRS 281.230 and its broad proscriptive language, the commission stated that it was reasonable to conclude that the Nevada legislature intended to establish a rigid rule of conduct for Nevada's public officers and that the statute must be applied without discrimination to all public officers in Nevada, whether the officers are located in a large or small city or county. Abstract, CEO 99-57 (5-19-2000), cited, In re Dressler, CEO 00-12 (10-6-2000), Abstract, CEO 01-14 (6-29-2001), Abstract, CEO 02-01 (3-21-2002)

Elected city official employed by a non-profit corporation must resign from the board of a publicly funded corporation. Where a public officer served as: (1) an elected city official for which he receives a salary and benefits; (2) a representative of the city on the board of a public corporation which was formed through a cooperative agreement among and funded by state and local governmental entities and the local chamber of commerce and which makes decisions regarding local economic diversification issues; and (3) an independent contractor employed for a fixed monthly amount as a marketing director to perform fundraising activities by a privately funded non-profit corporation formed to encourage economic development in the city, the commission on ethics opined that these three simultaneous positions gave rise to the potential for the types of conflicts of interests that the Nevada Ethics in Government Law was enacted to prevent. The commission

found that a potential conflict of interest is implicated where the businesses from whom the public officer had solicited funds for his employer, the nonprofit corporation, have business before the city and necessarily the public officer. In addition, the commission stated that the city, which is the public officer's employing governmental entity, is arguably affected by the public officer's contract under which he receives compensation from the nonprofit corporation for soliciting funds from the private sector to encourage local economic development, even if the city is affected in a very positive way. To comply with NRS 281.230, the commission required the public officer to relinquish his seat on the public corporation immediately to remove some of the appearance of impropriety and, if the circumstances change in the future such that money flows directly or indirectly from or through the public corporation to the private corporation, the commission stated that the public officer must either resign as an elected city official or resign from his position with the nonprofit corporation. Abstract, CEO 99-57 (5-19-2000)

Transaction between county sheriff's office and county sheriff's retail firearms business violated statute. Where a county sheriff and his wife own a retail firearms business from which the county sheriff's office purchased certain weapons and the sheriff was not involved in the bidding process for purchasing the weapons and erroneously assumed that the county sheriff's office had received three bids before purchasing the weapons from the sheriff's business, the commission on ethics opined that the sheriff violated NRS 281.230 because the transaction resulted in a profit of \$4.51 to the sheriff's business. In re Harris, CEO 99-64 (6-15-2000)

Statute does not prohibit activity that provides public benefit and does not offend other more specific relevant statutes. In enacting NRS 281.230, the commission on ethics found that the legislature did not intend to prohibit private activity by public officers and public employees which is of a separate nature from their public responsibilities and which: (1) provides a public benefit such as the training of apprentices; and (2) does not otherwise offend more specific relevant statutes. In re Daniels, DiBlasi and Troup, CEO 00-27, 00-28, 00-29 (8-28-2000)

Public officer of local government could violate statute if he participates as equity member in company that provides services for program for certain employees of local govern-

ment. Where an elected public officer of a local government wishes to participate as a fifty percent equity member in a limited-liability company that would provide services to manage a program for temporary, part-time and seasonal employees of the local government, the commission on ethics opined that the public officer could potentially violate NRS 281.230 if the company contracts with the local government to provide and receive a fee for providing services to manage such a program because the public officer, as an equity member of the company, would presumably be entitled to receive a percentage of the company's profits and therefore would be receiving a personal profit or compensation from a contract in which the local government was involved. Abstract, CEO 01-16 (6-13-2001)

Simultaneous service as board member and employee of department that board oversees may create prohibited type of compensatory relationship. Where: (1) a public officer who is a member of a state board wishes to apply for a position in a state department for which she holds a valid license and meets the qualifications; and (2) that state board appoints, evaluates and has the power to remove the administrator of the department in which the public officer seeks the position, approves all personnel positions for that department, proposes that department's annual budget and has the power to revoke relevant licenses, the commission on ethics opined that by serving as both a member of the board and an employee of the department, the public officer may create the type of compensatory relationship prohibited by NRS 281.230. Abstract, CEO 02-01 (3-21-2002)

Contract between county sheriff's pest control business and county library not prohibited. Where Mr. Harris, Sheriff of Elko County, owns one of two pest control businesses in Elko County and his business entered into a contract with the Elko County Library, the Commission on Ethics found that Sheriff Harris did not violate NRS 281.230 or 281.505 because: (1) although competitive bidding was not required for awarding the contract, Elko County was authorized by NRS 332.035 to enter into the contract without advertising for bids; (2) the sources of supply in Elko County for pest control services was limited; and (3) there was no evidence that Sheriff Harris took part in developing the contract plans or specifications for the Elko County Library regarding its pest control requirements or that he solicited pest control business from Elko County. In re Harris, CEO 02-08 (8-15-2002)

NRS 281.236 Employment of certain former public officers and employees by regulated businesses prohibited; determination by commission on ethics.

1. A public utility or parent organization or subsidiary of a public utility shall not employ a former member of the public utilities commission of Nevada for 1 year after the termination of his service on the commission.

2. A person who holds a license issued pursuant to chapter 463 or 464 of NRS or who is required to register with the Nevada gaming commission pursuant to chapter 463 of NRS shall not employ a former member of the state gaming control board or the Nevada gaming commission for 1 year after the termination of the member's service on the board or commission.

3. In addition to the prohibitions set forth in subsections 1 and 2, a business or industry whose activities are governed by regulations adopted by a department, division or other agency of the executive branch of government shall not, except as otherwise provided in subsection 4, employ a former public officer or employee of the agency, except a clerical employee, for 1 year after the termination of his service or period of employment if:

(a) His principal duties included the formulation of policy contained in the regulations governing the business or industry;

(b) During the immediately preceding year he directly performed activities, or controlled or influenced an audit, decision, investigation or other action, which significantly affected the business or industry which might, but for this section, employ him; or

(c) As a result of his governmental service or employment, he possesses knowledge of the trade secrets of a direct business competitor.

4. A public officer or employee may request the commission on ethics to apply the relevant facts in his case to the provisions of subsection 3 and determine whether relief from the strict application of the provisions is proper. If the commission on ethics determines that relief from the strict application of the provisions of subsection 3 is not contrary to:

(a) The best interests of the public;

(b) The continued integrity of state government; and

(c) The code of ethical standards prescribed in NRS 281.481,

it may issue an opinion to that effect and grant such relief. The opinion of the commission on ethics in such a case is subject to judicial review.

5. As used in this section, "regulation" has the meaning ascribed to it in NRS 233B.038.

(Added to NRS by 1987, 570; A 1993, 2496; 1997, 1986; 2001, 2288)

REVISER'S NOTES.

Ch. 266, Stats. 1987, the source of this section, contains the following provision not included in NRS:

"The provisions of section 1 of this act [NRS 281.236] do not apply to the employment of a person who is a member of the public service commission of Nevada, the state gaming control board or the Nevada gaming commission on July 1, 1987, or was a member before July 1, 1987, unless on or after that date, that person is appointed to serve as a member of another commission or board for which subsequent employment is restricted pursuant to section 1 of this act [NRS 281.236]."

Ch. 597, Stats. 1993, the source of subsection 3 of this section, contains the following provision not included in NRS:

"The provisions of subsection 3 of [NRS 281.236] do not apply to the service or employment of a public officer or employee who is serving or is employed by an agency, division or department of the executive branch of government

on July 12, 1993, or was such an officer or employee before July 12, 1993, unless on or after that date, that person is appointed to serve as an officer or retained as an employee of another agency, division or department of the executive branch of government for which subsequent employment is restricted pursuant to subsection 3 of [NRS 281.236]."

WEST PUBLISHING CO.

Gaming ⇌ 4.

WESTLAW Topic No. 188.

C.J.S. Gaming §§ 50, 82.

COMMISSION ON ETHICS OPINIONS.

Intent of special relief from strict application of statutory cooling-off period. Noting that it is common for people to work in governmental positions and then leave for related employment in the private sector, the commission on ethics stated that such moves from the public to the private sector may work to the benefit of the public because the private sector is enriched and made more efficient and effective through the special knowledge and understanding of former government

employees. The commission opined that NRS 281.236(4) was intended to facilitate such beneficial moves from public to private sectors as long as the moves do not endanger either the public or private sectors and as long as there is nothing otherwise unethical in the way that the employment relationship occurred. Abstract, CEO 95-61 (5-6-1996), cited, *In re Sheldrew*, CEO 00-44 (12-19-2000)

Former public employee entitled to special relief from strict application of statutory cooling-off period. Where a public employee resigned from his position with a division of a state department and accepted employment as an administrator at a school that conducts pre-licensing and continuing education for obtaining and maintaining a subject area license, which is an industry and school of which the curriculum is regulated by his former employer, the commission on ethics found that the statutory cooling-off period in NRS 281.236(3) would prohibit the public employee from commencing his new employment for 1 year following termination of his public employment because his former job duties included the review, monitoring and occasional approval of the faculty and curriculum of regulated schools, including the school with which he accepted the position of administrator. However, the commission found that the public employee's employment was entitled to special relief pursuant to NRS 281.236(4) because: (1) his employment was not contrary to the best interests of the public and the continued integrity of state government because it did not threaten the competitors of the school nor give the school an unfair advantage or knowledge; and (2) there was no evidence that the public employee violated the code of ethical standards prescribed in NRS 281.481 in the manner in which he entered into employment with the school because he did not possess any special information otherwise unavailable publicly or did not use any influence that he may have had as a result of his public employment to obtain the private employment. Abstract, CEO 95-61 (5-6-1996)

Acceptance of consulting work with start-up company by former public employee allowed during statutory cooling-off period. Where the employment of a public employee in an unclassified position with a state regulatory agency was involuntarily terminated, the commission on ethics opined that the statutory cooling-off period set forth in NRS 281.236 did not prohibit the former public employee from accepting consulting work with a corporation which is a start-up company interested in entering the local market in a rural county and which is not within the jurisdiction of the state regulatory agency because the former public employee did not: (1) formulate policy governing the corporation or the industry regulated by the agency nor was such policymaking included in the former public employee's principal duties at the agency; (2) control or influence a decision, investigation or other action that significantly affected the corporation or the regulated industry;

or (3) obtain knowledge of, or have access to, the trade secrets of a direct business competitor of the corporation. Abstract, CEO 99-51 (11-30-1999), cited, *In re Sheldrew*, CEO 00-44 (12-19-2000)

Employment of former public employee of regulatory agency by regulated company allowed. Where a former public employee of a state regulatory agency desires to apply for employment with a company that is regulated by the state regulatory agency, the commission on ethics found that the restraints of NRS 281.236 were not implicated because, during his less than 4-month employment with the agency, the former public employee did not: (1) formulate policy to regulate that company nor was such policymaking included in his principal duties and he did not represent the agency on any matter; (2) directly perform activities, or control or influence a decision, investigation or other action, which significantly affected the company or its industry; or (3) obtain knowledge of or have access to, the trade secrets of a direct business competitor or potential competitor of the company. Abstract, CEO 99-52 (11-30-1999), cited, *In re Sheldrew*, CEO 00-44 (12-19-2000)

Statutory cooling-off period does not prohibit employment of former public employee of public utilities commission of Nevada by regulated business. Where the employment of an unclassified public employee of the public utilities commission of Nevada was involuntarily terminated, the commission on ethics opined that the statutory cooling-off period set forth in NRS 281.236 did not prohibit the former public employee from seeking employment with businesses regulated by the public utilities commission because the former public employee: (1) was never involved in any capacity in the formulation of policy contained in the regulations governing the utilities industry or in any decision-making activities or processes relating to policy; (2) did not directly perform any activities, or control or influence an audit, decision, investigation or other action which significantly affected the industries or businesses where he might be seeking employment; and (3) did not acquire or possess any business trade secrets, proprietary information or competitive intelligence of any business whose activities are governed by the regulations adopted by the public utilities commission. Moreover, even if the former public employee's activities were within the scope of NRS 281.236(3), the commission stated that it found good cause under NRS 281.236(4) to grant to the former public employee relief from the strict application of NRS 281.236(3). *In re Sircar*, CEO 00-23 (8-1-2000), cited, *In re Sheldrew*, CEO 00-44 (12-19-2000)

Employment of former member of public utilities commission of Nevada by clients in utility industry. Where Ms. Sheldrew, who was a member of the public utilities commission of Nevada (PUCN), is employed by an out-of-state law firm to provide nonlegal consulting services to public and private sector clients involved in the utility industry, the commission on ethics found

that NRS 281.236 would not prohibit her from employment by clients that do not have business in Nevada and are not regulated by the PUCN. Because her duties with the PUCN involved the formulation of policy contained in regulations governing the utility business or industry, the commission opined that whether subsection 3 of NRS 281.236 would prohibit Ms. Sheldrew from being employed for one year after her date of termination with the PUCN by a client that does, or may in the future, provide services regulated by the PUCN or that is affiliated with a business licensed by the PUCN and whether, pursuant to subsection 4 of NRS 281.236, she would be entitled to relief from the strict application of the prohibition in subsection 3 of NRS 281.236 must be determined on a case-by-case basis, depending on the identity of the specific client and the specific facts surrounding the services provided or proposed to be provided or the nature of the affiliation to the business licensed by the PUCN. In re Sheldrew, CEO 00-44 (12-19-2000)

Intent of statutory cooling-off period. One goal of the legislature in enacting subsection 3 of NRS 281.236 was to significantly reduce the temptation for a public officer or employee to compromise public duties in favor of possible employment opportunities within the business or industry which the public officer or employee regulated. Public suspicions arise about the integrity of government and the ethical standards of public officers and employees if a regulator is permitted to accept such employment immediately after concluding his public service. In re Sheldrew, CEO 00-44 (12-19-2000)

Chapter does not prohibit former private-sector employee from being employed by board that regulates his former employer. Where a public officer who is a member of a regulatory board was previously employed by a company that is subject to regulation by the regulatory board and the public officer specifically oversees a division of the board that regulates the public officer's former employer, the commission on ethics stated that although NRS ch. 281 prohibits certain private-sector employment by a former public employee, the chapter does not impose any prohibition against a former private-sector employee being employed in a public capacity by a state agency that regulates the activities of the employee's former private employer. (See NRS 281.236.) Abstract, CEO 01-04 (6-4-2001)

Former member and chairman of state board of agriculture not prohibited from accepting employment with state department of agriculture. Where Mr. Connelley, who is a former member and chairman of the state board of agriculture and a former cattle rancher, wishes to accept an unclassified position as the administrator of the division of livestock identification of the state department of agriculture, which is the department which administers the board's policy, the commission on ethics opined that NRS 281.236

did not prohibit such employment. Noting that NRS 281.236 was designed to prevent a public officer or employee from using his public position to obtain employment in the private sector, the commission on ethics stated that: (1) neither NRS ch. 281 nor the public policy behind the ethics in government law prevents a person from serving on a board for a period of time and then accepting public employment; and (2) public employment of a former board member who brings a depth of background, experience, expertise and interest to the position would actually benefit the public interest, especially where the position has been difficult to fill. In re Connelley, CEO 01-05 (3-27-2001)

Statutory cooling-off period does not apply to employment of former public employee by vendor of former public employer because vendor's activities were not regulated by that employer. Where a former public employee of the department of motor vehicles and public safety (now the department of motor vehicles) was offered employment by a vendor of the department which supplied the department with computer technology, equipment and service, the commission on ethics opined that NRS 281.236 did not prohibit the former employee from accepting such employment because the vendor's activities are not regulated by the department. In re Albin, CEO 01-17 (6-20-2001)

Statutory cooling-off period does not apply to certain public employment before effective date of enactment of that period. Even if the department of motor vehicles and public safety (now the department of motor vehicles) regulated the activities of a vendor that offered employment to a former public employee of the department, the commission on ethics stated that the statutory cooling-off period set forth in subsection 3 of NRS 281.236 would not apply to the former employee because he was employed by the department before the effective date of that cooling-off period and a grandfather clause in the bill that enacted that cooling-off period specifically excluded from the restrictions on employment in that provision certain public employment before the effective date of that cooling-off period. In re Albin, CEO 01-17 (6-20-2001)

Recent former member of Taxicab Authority not prohibited from appearing before or owning interest in company regulated by Transportation Services Authority. Where Mr. Jimmerson, who was the Chairman of and a member of the Board of Directors of the Taxicab Authority, wishes to represent clients before the Transportation Services Authority, which regulates limousine companies and other transportation businesses, and wishes to obtain an ownership interest in a proposed limousine company within 1 year after the termination of his membership on the Taxicab Authority, the Commission on Ethics opined that such representation or such an interest by Mr. Jimmerson would not violate NRS 281.236

281.240

GENERAL PROVISIONS

because he was never a member of or served in a staff capacity for the Transportation Services Authority. In re Jimmerson, CEO 02-10 (8-8-2002)

Statutory cooling-off period prohibits member of Taxicab Authority from appearing before or being employed by an entity regulated by the Taxicab Authority for 1 year. Where Mr. Jimmerson was the Chairman of and a member of

the Board of Directors of the Taxicab Authority, the Commission on Ethics opined that NRS 281.236 would prohibit Mr. Jimmerson from being employed by a business or industry regulated by the Taxicab Authority and from appearing, in a private capacity, before the Taxicab Authority until 1 year after the termination of his service as a member of the Board of Directors of the Taxicab Authority. In re Jimmerson, CEO 02-10 (8-8-2002)

NRS 281.240 Grant of authority to discharge duties of public office unlawful; giving consideration for grant unlawful; penalties.

1. Every person holding or exercising any office under the laws or constitution of this state, who shall, for any reward or gratuity paid, or agreed to be paid, grant to another the right or authority to discharge any of the duties of such office (except his lawful deputies), shall be punished by a fine not exceeding \$5,000, and shall be removed from office.

2. Every person who shall give, or make any agreement to give, any reward or gratuity in consideration of such grant or authority, shall be punished by a fine of not more than \$5,000.

[69:108:1866; B § 2667; BH § 1704; C § 1850; RL § 2822; NCL § 4822]—(NRS A 1967, 551)

WEST PUBLISHING CO.

Officers and Public Employees ⇌ 104.

WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees § 276.

NRS 281.250 Administration of oaths and affirmations by officers. Every officer authorized to take testimony or to decide upon the evidence in any proceeding shall have power to administer oaths or affirmations.

[Part 1911 CPA § 541; RL § 5483; NCL § 9030]

WEST PUBLISHING CO.

Oath ⇌ 2.

WESTLAW Topic No. 280.

C.J.S. Oaths and Affirmations § 4.

NRS 281.260 Fees for returns prohibited; computation of mileage; penalty.

1. No officer shall be allowed to charge or receive any fee or compensation whatever for the return written upon any summons, subpoena, writ of attachment, execution, order of sale or other paper. Any officer violating the terms of this subsection shall be fined not more than \$500, and shall be removed from office.

2. Where mileage is chargeable it shall be for the actual distance traveled, and every fraction of a mile shall be computed as a mile. Where mileage is chargeable by a sheriff, it shall be computed as provided in NRS 248.400.

[38:49:1883; BH § 2379; C § 2503; RL § 2040; NCL § 2971] + [Part 39:49:1883; BH § 2380; C § 2504; RL § 2041; NCL § 2972]—(NRS A 1967, 551)

NRS 281.270 Officer to prevent duel: Penalty. If any officer bound to preserve the public peace shall have knowledge of an intention, on the part of any two persons, to fight with a deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the persons and prevent the deed, every such officer shall be fined in a sum not exceeding \$1,000.

[Part 70:108:1866; B § 2668; BH § 1705; C § 1851; RL § 2823; NCL § 4823]

GENERAL PROVISIONS

281.320

WEST PUBLISHING CO.Officers and Public Employees ⇐ 121.
WESTLAW Topic No. 283.C.J.S. Officers and Public Employees §§ 255
to 289.

NRS 281.280 Officer refusing to receive or arrest person charged with criminal offense: Penalties. If any officer shall willfully refuse to receive or arrest any person charged with a criminal offense, such officer is guilty of a gross misdemeanor and shall be removed from office.

[Part 67:108:1866; B § 2665; BH § 1702; C § 1848; RL § 2820; NCL § 4820]—
(NRS A 1967, 551)

WEST PUBLISHING CO.Officers and Public Employees ⇐ 116, 121.
WESTLAW Topic No. 283.C.J.S. Officers and Public Employees §§ 206
to 208, 255 to 259.

NRS 281.290 Officer executing process may command assistance when resistance made.

1. When a public officer authorized to execute process finds or has reason to apprehend that resistance will be made to the execution of his process, he may command as many inhabitants of his county as he thinks proper, and may call upon the governor for military aid in the manner provided by law, to assist him in overcoming the resistance, and, if necessary, in seizing, arresting and confining the resisters and their aiders and abettors, to be punished according to law.

2. The officer shall certify, to the court from which the process issued, the names of the resisters and their aiders and abettors, to the end that they be proceeded against for their contempt of court.

[Part 83:108:1866; B § 2681; BH § 1718; C § 1864; RL § 2833; NCL § 4833] +
[84:108:1866; B § 2682; BH § 1719; C § 1865; RL § 2834; NCL § 4834]—(NRS A 1967, 1341; 1981, 461)

WEST PUBLISHING CO.

Arrest ⇐ 69.

WESTLAW Topic No. 35.
C.J.S. Arrest § 50.

NRS 281.310 Audits and allowances of accounts of state officers: Affidavits; oaths and affirmations. In all cases where officers are called upon to audit and allow the accounts of state officers, they shall take and file affidavits of the officers that they have not violated any of the provisions of law. For that purpose all officers, authorized by law to audit and allow accounts, are empowered and required to administer oaths and affirmations, which shall have the same force and validity in all actions for perjury as if administered by a judicial officer.

[Part 97:108:1866; B § 2695; BH § 1732; C § 1878; RL § 2844; NCL § 4844]

NRS 281.320 Withholding of settlement and payment of accounts of public officers. Any officer charged with the disbursement of any public moneys or any evidence of public indebtedness, when informed by affidavit of the violation of any provisions of law by any officer whose account is to be settled, audited or paid by him, shall withhold any settlement or payment of the same and cause the officer to be prosecuted.

[Part 100:108:1866; B § 2698; BH § 1735; C § 1881; RL § 2847; NCL § 4847]

281.330

GENERAL PROVISIONS

NRS 281.330 Advocating overthrow of government cause for dismissal of public employee. It shall be sufficient cause for the dismissal of any public employee when such public employee advocates or is a member of an organization which advocates overthrow of the Government of the United States or of the state by force, violence or other unlawful means.

[Part 1:20:1955]

WEST PUBLISHING CO.

Officers and Public Employees ⇌ 66.
WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 91,
119 to 126.

NRS 281.340 Obtaining appointment by false letter or certificate: Penalty. Every person who shall obtain appointment to any office or place of trust by color or aid of any false or forged letter or certificate of recommendation shall be guilty of a misdemeanor.

[Part 1911 C&P § 522; RL § 6787; NCL § 10468]

WEST PUBLISHING CO.

Officers and Public Employees ⇌ 121.
WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 255
to 289.

NRS 281.350 Grafting by public officer or employee: Penalty. Every public officer or public employee who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon any agreement or understanding that he shall act in any particular manner in connection with his official duties or the public service; or who, being authorized to purchase or contract for materials, supplies or other articles or to employ servants or labor for the state or any county or municipality, or for the public service, shall ask or receive, directly or indirectly, for himself or another, a commission, percentage, discount, bonus or promise thereof from any person with whom he may deal in relation to such matters, shall be guilty of a gross misdemeanor.

[Part 1911 C&P § 521; RL § 6786; NCL § 10467]—(NRS A 1963, 17)

WEST PUBLISHING CO.

Bribery ⇌ 1(1).

WESTLAW Topic No. 63.

C.J.S. Bribery §§ 1, 2.

NRS 281.360 Failure by public officer or employee to perform duty: Penalty. Whenever any duty is enjoined by law upon any public officer or other person holding any public trust or employment, their willful neglect to perform such duty, except where otherwise specifically provided for, shall be a misdemeanor.

[1911 C&P § 24; RL § 6289; NCL § 9973]

WEST PUBLISHING CO.

Officers and Public Employees ⇌ 121.
WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 255
to 259.

NRS 281.370 Actions concerning personnel to be based on merit and fitness; discrimination prohibited.

1. All personnel actions taken by state, county or municipal departments, housing authorities, agencies, boards or appointing officers thereof must be based solely on merit and fitness.

2. State, county or municipal departments, housing authorities, agencies, boards or appointing officers thereof shall not refuse to hire a person, discharge or bar any

GENERAL PROVISIONS

281.380

person from employment or discriminate against any person in compensation or in other terms or conditions of employment because of his race, creed, color, national origin, sex, sexual orientation, age, political affiliation or disability, except when based upon a bona fide occupational qualification.

3. As used in this section:

(a) "Disability" means, with respect to a person:

(1) A physical or mental impairment that substantially limits one or more of the major life activities of the person;

(2) A record of such an impairment; or

(3) Being regarded as having such an impairment.

(b) "Sexual orientation" means having or being perceived as having an orientation for heterosexuality, homosexuality or bisexuality.

(Added to NRS by 1959, 137; A 1973, 980; 1985, 1561; 1987, 2266; 1991, 1021; 1995, 814; 1999, 1941)

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Officers and Public Employees ⇐ 11.1 et seq.

WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 52, 55.

NEVADA CASES.

Statute invalidates school district regulation providing for compulsory retirement of certified employees at certain age. A school district regulation providing for compulsory retirement of certified employees at a certain age was invalid because it was in conflict with the provisions of NRS 281.370 which prohibits age discrimination in public employment. *Clark County School Dist. v. Beebe*, 91 Nev. 165, 533 P.2d 161 (1975)

Statute did not interfere with board of regents' essential management and control of university; regents' policy of faculty retirement at 70 was invalid. NRS 281.370, which prohibits all state departments, agencies and boards from discriminating against any person in employment because of age, did not interfere with the board of regents' essential management and control of the university pursuant to Nev. Art. 11, § 7, and the regents' policy requiring a member of the faculty to retire at the end of the contract year in which he reached age 70 was invalid because it violated provisions of the statute. *Board of Regents v. Oakley*, 97 Nev. 605, 637 P.2d 1199 (1981)

Section does not provide private right of action for employment discrimination. No private right of action for employment discrimination is provided by NRS 281.370. *Palmer v. State*, 106 Nev. 151, 787 P.2d 803 (1990)

NRS 281.375 Application for employment: Volunteer work must be considered. Every application form for employment with the State of Nevada, any of its political subdivisions or any agency of the state must indicate that volunteer work relevant to the position applied for is considered in the evaluation of the applicant's qualifications for employment and must provide space for the applicant to list any volunteer work he considers appropriate.

(Added to NRS by 1981, 350)

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Officers and Public Employees ⇐ 8.

WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees § 36.

NRS 281.380 Public officers and employees required to accept reproductions of business records for examination and other purposes. If any business, institution or member of a profession or calling has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event and has caused any or all of such records to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, such reproduction shall be accepted by all

281.390

GENERAL PROVISIONS

public officers and employees for examination, filing, copying or any other purpose as if it were the original, whether or not the original is then in existence.

(Added to NRS by 1963, 523)

NRS 281.390 Sick leave of public employees: Election of benefits; amount limited when eligible for benefits for industrial or occupational disease.

1. When any public employee is eligible at the same time for benefits for temporary total disability pursuant to chapters 616A to 616D, inclusive, or 617 of NRS and for any sick leave benefit, he may, by giving notice to his employer, elect to continue to receive his normal salary instead of the benefits pursuant to those chapters until his accrued sick leave time is exhausted. The employer shall notify the insurer that provides industrial insurance for that employer of the election. The employer shall continue to pay the employee his normal salary but charge against the employee's accrued sick leave time as taken during the pay period an amount which represents the difference between his normal salary and the amount of any benefit for temporary total disability received, exclusive of reimbursement or payment of medical or hospital expenses pursuant to chapters 616A to 616D, inclusive, or 617 of NRS for that pay period.

2. When the employee's accrued sick leave time is exhausted, payment of his normal salary pursuant to subsection 1 must be discontinued and the employer shall promptly notify the insurer that provides industrial insurance for that employer so that it may begin paying the benefits to which the employee is entitled directly to the employee.

3. An employee who declines to make the election provided in subsection 1, may use all or part of the sick leave benefit normally payable to him while directly receiving benefits for temporary total disability pursuant to chapters 616A to 616D, inclusive, or 617 of NRS, but the amount of sick leave benefit paid to the employee for any pay period must not exceed the difference between his normal salary and the amount of any benefit received, exclusive of reimbursement or payment of medical or hospital expenses pursuant to those chapters for that pay period.

4. If the amount of the employee's sick leave benefit is reduced pursuant to subsection 3 below the amount normally payable, the amount of sick leave time charged against the employee as taken during that pay period must be reduced in the same proportion.

5. The public employee may decline to use any or part of the sick leave benefit normally payable to him while receiving benefits pursuant to chapters 616A to 616D, inclusive, or 617 of NRS. During that time, the employee must be considered on leave of absence without pay.

(Added to NRS by 1969, 439; A 1975, 205; 1981, 497, 1538; 1995, 2042; 1999, 1814)

NRS 281.400 Coercion respecting membership in organizations of aged, blind or disabled prohibited. No officer or employee of the state or any county, city or district who is concerned with the administration of any program for the aged, blind or disabled shall, in his official capacity, attempt to coerce or coerce any aged, blind or disabled person to join or refrain from joining any organization of the aged, blind or disabled.

(Added to NRS by 1971, 174)

WEST PUBLISHING CO.
Officers and Public Employees § 27.
WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 15,
16, 34, 35.

NRS 281.405 Lien against public officer or employee: Validity; "lien" defined.

1. Any lien which is filed or otherwise claimed against a public officer or employee which is based on the performance of or failure to perform a duty relating to his office or employment is invalid unless the filing of the lien is authorized by a specific statute or by an order of a court of competent jurisdiction.

2. As used in this section, "lien" means an encumbrance on property which is used as security for the payment of a debt.

(Added to NRS by 1997, 72)

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Officers and Public Employees ⇐ 119.
WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 250-254, 280.

ETHICS IN GOVERNMENT

NEVADA CASES.

Statute not ex post facto. Nevada Ethics in Government Law (cf. NRS 281.411 et seq.) was not ex post facto law prohibited by Nev. Art. 1, § 15, because it was prospective, not retrospective in operation. *Dunphy v. Sheehan*, 92 Nev. 259, 549 P.2d 332 (1976)

Exclusion of judiciary from statute required by doctrine of separation of powers. Exclusion of members of judiciary from provisions of Nevada Ethics in Government Law (cf. NRS 281.411 et seq.) was required by doctrine of separation of powers because promulgation of code of judicial ethics is essential to due administration of justice and is within inherent power of judicial department. *Dunphy v. Sheehan*, 92 Nev. 259, 549 P.2d 332 (1976), cited, *City of N. Las Vegas ex rel. Arndt v. Daines*, 92 Nev. 292, at 294, 550 P.2d 399 (1976), *Nevada Indus. Comm'n v. Reese*, 93 Nev. 115, at 129, 560 P.2d 1352 (1977) (dissenting opinion), *Goldberg v. Eighth Judicial Dist. Court*, 93 Nev. 614, at 616, 572 P.2d 521 (1977), *Whitehead v. Commission on Judicial Discipline*, 110 Nev. 874, at 880, 878 P.2d 913 (1994), AGO 94-24 (11-30-1994), see also *State v. Second Judicial Dist. Court*, 116 Nev. 953, at 961, 11 P.3d 1209 (2000), *Blackjack Bonding v. City of Las Vegas Mun. Ct.*, 116 Nev. 1213, at 1218, 14 P.3d 1275 (2000)

Supreme court may conduct de novo review of commission on ethics' construction of Nevada Ethics in Government Law; district court is obligated to give deference to construction afforded by commission. Although supreme court may conduct de novo review of commission on ethics' construction of Nevada Ethics in Government Law (see NRS 281.411 et seq.), district court is obligated to give deference to construction af-

forded by commission. (See also NRS 281.511.) *Nevada Comm'n on Ethics v. JMA/Lucchesi*, 110 Nev. 1, 866 P.2d 297 (1994)

ATTORNEY GENERAL'S OPINIONS.

"Public officer" defined. For purposes of Nevada Ethics in Government Law (see NRS 281.411 et seq.), the term "public officer" includes (1) elective officers and (2) persons appointed to positions created by law whose duties are specifically set forth in law and who are made responsible, by law, for the direction, supervision and control of their agencies, including part-time officers and those who serve without compensation. The term does not include persons in positions created by the U.S. Constitution, persons in judicial department of state, members of committees, commissions or boards which are solely advisory in nature, notaries public and commissioners of deeds, deputies and assistants to public officers. AGO 193 (9-3-1975), cited, AGO 86-6 (5-12-1986), AGO 96-15 (5-28-1996), AGO 96-33 (11-8-1996), Abstract, CEO 00-35 (10-19-2000)

Good faith reliance upon the advice of counsel as a complete defense. The good faith reliance of a public officer upon the advice of counsel is recognized by NRS 281.551 as a defense to the element of willfulness in ethics cases. This defense could be expanded to constitute a complete defense in appropriate cases. Public officers who sincerely attempt to comply with the law by consulting with counsel, who completely disclose relevant facts to their counsel, and who receive and follow advice consistent with the Nevada Ethics in Government Law (see NRS 281.411 et seq.), should not be found in violation, even if there is some subsequent disagreement regarding the advice given. (See also NRS 281.501.) AGO 98-27 (9-25-1998)

GENERAL PROVISIONS

NRS 281.411 Short title. NRS 281.411 to 281.581, inclusive, may be cited as the Nevada Ethics in Government Law.

(Added to NRS by 1977, 1103; A 1995, 2443)

NRS 281.421 Legislative declaration and findings.

1. It is hereby declared to be the public policy of this state that:

(a) A public office is a public trust and shall be held for the sole benefit of the people.

(b) A public officer or employee must commit himself to avoid conflicts between his private interests and those of the general public whom he serves.

2. The legislature finds that:

(a) The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interests.

(b) To enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.

(c) Members of the legislature serve as "citizen legislators" who have other occupations and business interests. Each legislator has particular philosophies and perspectives that are necessarily influenced by the life experiences of that legislator, including, without limitation, professional, family and business experiences. Our system assumes that legislators will contribute those philosophies and perspectives to the debate over issues with which the legislature is confronted. The law concerning ethics in government is not intended to require a member of the legislature to abstain on issues which might affect his interests, provided those interests are properly disclosed and that the benefit or detriment accruing to him is not greater than that accruing to any other member of the general business, profession, occupation or group.

(Added to NRS by 1977, 1103; A 1999, 2730)

NEVADA CASES.

Effect of section on contracting by public employees. Provisions of NRS 281.421 reflect the legislative intent to prevent public employees from entering into any contract which would present a conflict between an employee's private interests and those of the general public, not just those contracts involving offers based on price. Therefore, design proposals for an architectural school building submitted by a faculty member of the University and Community College System of Nevada were bids within the meaning of former provisions of NRS 281.481 (cf. NRS 281.505) even though the proposals did not specify a price. The key element of the term "bid" is not price, but a competitive offer to a contract. *Nevada Comm'n on Ethics v. JMA/Lucchesi*, 110 Nev. 1, 866 P.2d 297 (1994)

COMMISSION ON ETHICS OPINIONS.

Intent and policy objectives of chapter. The commission on ethics stated that the apparent intent of certain sections of NRS ch. 281 is to prevent public officers and employees from becoming involved in situations generating conflicts between public and private interests so as to preserve and enhance the impartiality of public office

and faith in the integrity of government. The commission noted that the policy objectives for ethics in government laws in general include: (1) impartiality, fairness and equality of treatment toward those dealing with government; (2) the assurance that decisions of public importance will not be influenced by private considerations; (3) maintenance of public confidence in government, which implicates the matter of appearances; and (4) the prevention of use of public office for private gain. (See NRS 281.421.) Abstract, CEO 99-57 (5-19-2000), cited, *In re McDonald*, CEO 00-41 (7-13-2001), *In re Shangle*, CEO 01-40 (5-17-2002), see also *In re Dressler*, CEO 00-2 (10-6-2000), Abstract, CEO 00-53 (1-24-2001), Abstract, CEO 00-55 (3-6-2001)

Explanation of conflict of interest. A conflict of interest, either actual or potential, is a situation requiring a public officer to serve two masters, presenting a potential, rather than an actuality, of wrongdoing. The wrongdoing does not have to actually occur in order for a prohibited conflict to exist. A public official may have done no wrong in the ordinary sense of the word, but a conflict of interest may put him in danger of doing wrong. It is avoiding even the potential danger of doing

wrong which is the focus of the ethics in government law. For this purpose, the ethics in government law identifies certain types of conflicts of interest and prohibits conduct by public officials that would allow these conflicts to occur. (See NRS 281.421.) Abstract, CEO 00-53 (1-24-2001), cited, *In re Shangle*, CEO 01-40 (5-17-2002), see also Abstract, CEO 00-55 (3-6-2001)

Primary intent of ethics in government law.

The primary intent of the ethics in government law is to keep public officers grounded in the policy that a public office is a public trust to be held for the sole benefit of the people. Therefore, for the enhancement of the people's faith in the integrity and impartiality of public officers, public officers must be committed to an effort of consciously avoiding conflicts between their private interests and those of the general public whom they serve. (See NRS 281.421.) *In re Kenny*, CEO 00-54 (9-20-2001)

Public officers must appropriately separate their private political interests and activities from their public duties. Although the political process and an individual's right to freely participate in political activity are of extreme importance and the importance of that right is not diminished in any way by the fact that the individual is a public officer, public officers are required to appropriately separate their private political interests and activities from their public duties. (See NRS 281.421.) *In re Barrett*, CEO 01-08A (2-1-2002)

Constitutional right of elected public officials to speak out on political concerns tempered by ethics in government law. All individuals enjoy a constitutional right to speak out on political concerns. The Nevada Ethics in Government Law, however, prohibits an elected public official from "speaking out" on political concerns or otherwise engaging in activity in such a manner that would create an appearance of impropriety or the impression that the government sanctions the activity. Therefore, public officers must temper their constitutional right to speak out on political concerns with a common-sense realization that the reason their endorsement is sought is because of their public position and the respect and deference accorded to that position. (See NRS 281.421.) *In re Hettrick*, CEO 01-10 (6-4-2001)

Limitations on informality of public officers' conduct in small rural counties. Although it is understandable that public officers in the small rural counties in Nevada may conduct business with less formality than those in the larger, more metropolitan areas in Nevada, the formality of a public officer's conduct should never be so relaxed that it offends the public trust and the ethical standards to which public officers are accountable. (See NRS 281.421.) *In re Shangle*, CEO 01-40 (5-17-2002)

NRS 281.431 Definitions. As used in NRS 281.411 to 281.581, inclusive, unless the context otherwise requires, the words and terms defined in NRS 281.432 to 281.4375, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1977, 1103; A 1985, 1216, 2122; 1987, 385; 1991, 1594; 1997, 256; 1999, 2731)

NRS 281.432 "Business entity" defined. "Business entity" means any proprietorship, partnership, corporation or other enterprise doing business in the State of Nevada.

(Added to NRS by 1985, 2120)

NRS 281.4323 "Candidate" defined. "Candidate" means any person:

1. Who files a declaration of candidacy;
2. Who files an acceptance of candidacy; or
3. Whose name appears on an official ballot at any election.

(Added to NRS by 1991, 1591; A 1993, 265; 2001, 1955)

NRS 281.4325 "Commission" defined. "Commission" means the commission on ethics.

(Added to NRS by 1985, 2120)

NRS 281.4327 "Compensation" defined. "Compensation" means any money, thing of value or economic benefit conferred on or received by any person in return for services rendered, personally or by another.

(Added to NRS by 1991, 1591)

281.433

GENERAL PROVISIONS

NRS 281.433 “Decision” defined. The making of a “decision” is the exercise of governmental power to adopt laws, regulations or standards, render quasi-judicial decisions, establish executive policy or determine questions involving substantial discretion. The term does not include the functions of the judiciary.

(Added to NRS by 1985, 2121)

NRS 281.4333 “Executive director” defined. “Executive director” means the executive director appointed by the commission pursuant to NRS 281.463.

(Added to NRS by 1999, 2728)

NRS 281.434 “Household” defined. “Household” means an association of persons who live in the same home or dwelling, sharing its expenses, and who are related by blood, adoption or marriage.

(Added to NRS by 1985, 2121)

NRS 281.4345 “Legislative function” defined. “Legislative function” means introducing or voting upon any ordinance or resolution, or voting upon:

1. The appropriation of public money;
2. The issuance of a license or permit; or
3. Any proposed subdivision of land or special exception or variance from zoning regulations.

(Added to NRS by 1985, 2121)

NRS 281.435 “Member of the executive branch” defined. “Member of the executive branch” means any public officer who is not a member of the legislative branch.

(Added to NRS by 1985, 2121)

NRS 281.4355 “Member of the legislative branch” defined. “Member of the legislative branch” means any member of the legislature or any member of a board of county commissioners or governing body of a city or other political subdivision who performs a legislative function.

(Added to NRS by 1985, 2121)

NRS 281.4357 “Panel” defined. “Panel” means the panel appointed by the commission pursuant to NRS 281.462.

(Added to NRS by 1999, 2728)

NRS 281.436 “Public employee” defined. “Public employee” means any person who performs public duties under the direction and control of a public officer for compensation paid by the state, a county or an incorporated city.

(Added to NRS by 1985, 2121)

NRS 281.4365 “Public officer” defined.

1. “Public officer” means a person elected or appointed to a position which is established by the constitution of the State of Nevada, a statute of this state or an ordinance of any of its counties or incorporated cities and which involves the exercise of a public power, trust or duty. As used in this section, “the exercise of a public power, trust or duty” means:

(a) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy;

(b) The expenditure of public money; and

- (c) The enforcement of laws and rules of the state, a county or a city.
 - 2. "Public officer" does not include:
 - (a) Any justice, judge or other officer of the court system;
 - (b) Any member of a board, commission or other body whose function is advisory;
 - (c) Any member of a board of trustees for a general improvement district or special district whose official duties do not include the formulation of a budget for the district or the authorization of the expenditure of the district's money; or
 - (d) A county health officer appointed pursuant to NRS 439.290.
 - 3. "Public office" does not include an office held by:
 - (a) Any justice, judge or other officer of the court system;
 - (b) Any member of a board, commission or other body whose function is advisory;
 - (c) Any member of a board of trustees for a general improvement district or special district whose official duties do not include the formulation of a budget for the district or the authorization of the expenditure of the district's money; or
 - (d) A county health officer appointed pursuant to NRS 439.290.
- (Added to NRS by 1985, 2121; A 1987, 2093; 1999, 883; 2001, 658, 1955, 2288)

ATTORNEY GENERAL'S OPINIONS.

County library trustee required to file statement of financial disclosure. A county library trustee is a public officer within the meaning of NRS 281.4365 and is, therefore, required to file a statement of financial disclosure pursuant to NRS 281.561. AGO 86-6 (5-12-1986)

County engineer is "public officer." A county engineer is a public officer within the meaning of NRS 281.4365. AGO 89-14 (9-26-1989)

County employee designated by county manager as head of department or staff director is not "public officer." Because a county employee designated by the county manager as head of a department or staff director serves at the will of the county manager and the board of county commissioners such employee is not a public officer within the meaning of NRS 281.4365 and, therefore, is not required to file a statement of financial disclosure pursuant to NRS 281.561. AGO 96-15 (5-28-1996), cited, AGO 96-33 (11-8-1996)

City manager is "public officer." A city manager is a public officer within the meaning of NRS 281.4365 because the office is established by an ordinance of a political subdivision of the state and involves continuous exercise of public power, trust or duty. A city manager, therefore, is required to file a statement of financial disclosure pursuant to NRS 281.561. AGO 96-33 (11-8-1996)

Officers appointed by city manager are not "public officers." Officers appointed by a city manager are not public officers within the meaning of NRS 281.4365 because their duties are delegated to them by higher authorities. Such officers, therefore, are not required to file statements of financial disclosure pursuant to NRS 281.561. AGO 96-33 (11-8-1996)

COMMISSION ON ETHICS OPINIONS.

Members of steering committee appointed by redevelopment agency are not public officers. Where a public officer who is a member of a city council and a redevelopment agency was also a member of a steering committee, which consisted of public officers and private citizens and was created by a special act to assist the redevelopment agency in its endeavor to redevelop the city's downtown gaming and tourism enterprises through a public/private partnership, the commission on ethics opined that members of the steering committee were not "public officers" pursuant to NRS 281.4365 when acting in the capacity of members of the steering committee because the committee appeared to function in an advisory capacity to the redevelopment agency and the local convention and visitor's authority and a member of a board, commission or other body whose function is advisory is excluded from the definition of "public officer" in NRS 281.4365. Abstract, CEO 00-35 (10-19-2000)

Members of Laughlin Town Advisory Board and its standing committees are not public officers. For the purposes of chapter 281 of NRS, the commission on ethics opined that members of the Laughlin Town Advisory Board, who are appointed by the Clark County Board of Commissioners, and members of the Advisory Board's standing committees, who are interested citizens appointed by the Advisory Board, are not "public officers" because: (1) a member of a board, commission or other body whose function is advisory is excluded from the definition of "public officer" in NRS 281.4365; and (2) the Laughlin Town Advisory Board is advisory to the Clark County Board of Commissioners and the standing committees of the Laughlin Town Advisory Board are advisory to that Advisory Board. (See NRS 281.005 and 281.4365.) In re Haldeman, CEO 00-46 (1-4-2001)

NRS 281.437 “Vexatious” defined. “Vexatious” means lacking justification and intended to harass.

(Added to NRS by 1999, 2728)

NRS 281.4375 “Willful violation” defined. “Willful violation” means the public officer or employee knew or reasonably should have known that his conduct violated this chapter.

(Added to NRS by 1999, 2728)

COMMISSION ON ETHICS

ADMINISTRATIVE REGULATIONS.

Commission on ethics, NAC 281.005-281.185

NRS 281.455 Creation; appointment, terms and qualifications of members; prohibited activities by members; vacancies.

1. The commission on ethics, consisting of eight members, is hereby created.
2. The legislative commission shall appoint to the commission four residents of the state, at least two of whom are former public officers, and at least one of whom must be an attorney licensed to practice law in this state.
3. The governor shall appoint to the commission four residents of the state, at least two of whom must be former public officers or public employees, and at least one of whom must be an attorney licensed to practice law in this state.
4. Not more than four members of the commission may be members of the same political party. Not more than four members may be residents of the same county.
5. None of the members of the commission may:
 - (a) Hold another public office;
 - (b) Be actively involved in the work of any political party or political campaign;
 or
 - (c) Communicate directly with a member of the legislative branch on behalf of someone other than himself or the commission, for compensation, to influence legislative action,
 while he is serving on the commission.
6. After the initial terms, the terms of the members are 4 years. Any vacancy in the membership must be filled by the appropriate appointing authority for the unexpired term. Each member may serve no more than two consecutive full terms.

(Added to NRS by 1985, 2121; A 1991, 1594; 1999, 2731)

ATTORNEY GENERAL'S OPINIONS.

Member of commission may make campaign contributions. A member of the commission on ethics is not prohibited from making campaign contributions. Although NRS 281.455 prohibits a member of the commission from being “actively involved in the work of any political party or political campaign,” such prohibited active involvement contemplates an obligation of time, energy, effort, and either mental or physical

activity. Merely contributing money to a political campaign does not trigger the prohibition. Furthermore, a member of the commission on ethics acts in a quasi-judicial capacity and C.J.C. Canon 5A(1), prohibiting judges and judicial candidates from engaging in inappropriate political activities, does not prohibit private contributions to a political candidate or organization. AGO 2002-26 (6-17-2002)

NRS 281.461 Chairman; meetings; compensation; facilities.

1. The commission shall:
 - (a) At its first meeting and annually thereafter elect a chairman and vice chairman from among its members.

(b) Meet regularly at least once in each calendar quarter, unless there are no requests made for an opinion pursuant to NRS 281.511, 294A.345 or 294A.346, and at other times upon the call of the chairman.

2. Members of the commission are entitled to receive a salary of not more than \$80 per day, as fixed by the commission, while engaged in the business of the commission.

3. While engaged in the business of the commission, each member and employee of the commission is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.

4. The commission may, within the limits of legislative appropriation, maintain such facilities as are required to carry out its functions.

(Added to NRS by 1977, 1105; A 1981, 1979; 1983, 1440; 1985, 391, 2123; 1987, 2094; 1989, 1709; 1991, 1594; 1997, 256; 1999, 2732)

NRS 281.462 Panels: Appointment; members; review and final determination of just and sufficient cause; disqualification of members from participation in further proceedings in matter.

1. The chairman shall appoint one or more panels of two members of the commission on a rotating basis to review the determinations of just and sufficient cause made by the executive director pursuant to NRS 281.511 and make a final determination regarding whether just and sufficient cause exists for the commission to render an opinion.

2. The chairman and vice chairman of the commission may not serve together on a panel.

3. The members of a panel may not be members of the same political party.

4. If a panel finds just and sufficient cause for the commission to render an opinion in a matter, the members of the panel shall not participate in any further proceedings of the commission relating to that matter.

(Added to NRS by 1999, 2730)

NRS 281.463 Executive director: Appointment; qualifications; classification; prohibited activities and other employment.

1. The commission shall appoint, within the limits of legislative appropriation, an executive director who shall perform the duties set forth in this chapter and such other duties as may be prescribed by the commission.

2. The executive director must have experience in administration, law enforcement, investigations or law.

3. The executive director is in the unclassified service of the state.

4. The executive director shall devote his entire time and attention to the business of the commission and shall not pursue any other business or occupation or hold any other office of profit that detracts from the full and timely performance of his duties.

5. The executive director may not:

(a) Be actively involved in the work of any political party or political campaign;

or

(b) Communicate directly or indirectly with a member of the legislative branch on behalf of someone other than himself to influence legislative action, except in pursuit of the business of the commission.

(Added to NRS by 1999, 2728)

NRS 281.4635 Executive director: Duties; employment of staff.

1. In addition to any other duties imposed upon him, the executive director shall:

(a) Maintain complete and accurate records of all transactions and proceedings of the commission.

(b) Receive requests for opinions pursuant to NRS 281.511, 294A.345 or 294A.346.

(c) Gather information and conduct investigations regarding requests for opinions received by the commission and submit recommendations to the panel appointed pursuant to NRS 281.462 regarding whether there is just and sufficient cause to render an opinion in response to a particular request.

(d) Recommend to the commission any regulations or legislation that he considers desirable or necessary to improve the operation of the commission and maintain high standards of ethical conduct in government.

(e) Upon the request of any public officer or the employer of a public employee, conduct training on the requirements of this chapter, the rules and regulations adopted by the commission and previous opinions of the commission. In any such training, the executive director shall emphasize that he is not a member of the commission and that only the commission may issue opinions concerning the application of the statutory ethical standards to any given set of facts and circumstances. The commission shall charge a reasonable fee to cover the costs of training provided by the executive director pursuant to this subsection.

(f) Perform such other duties, not inconsistent with law, as may be required by the commission.

2. The executive director shall, within the limits of legislative appropriation, employ such persons as are necessary to carry out any of his duties relating to:

(a) The administration of the affairs of the commission;

(b) The review of statements of financial disclosure; and

(c) The investigation of matters under the jurisdiction of the commission.

(Added to NRS by 1999, 2729)

NRS 281.464 Commission counsel: Appointment; qualifications; classification; prohibited activities and other employment.

1. The commission shall appoint, within the limits of legislative appropriation, a commission counsel who shall perform the duties set forth in this chapter and such other duties as may be prescribed by the commission.

2. The commission counsel must be an attorney who is licensed to practice law in this state.

3. The commission counsel is in the unclassified service of the state.

4. The commission counsel shall devote his entire time and attention to the business of the commission and shall not pursue any other business or occupation or hold any other office of profit that detracts from the full and timely performance of his duties.

5. The commission counsel may not:

(a) Be actively involved in the work of any political party or political campaign;
or

(b) Communicate directly or indirectly with a member of the legislative branch on behalf of someone other than himself to influence legislative action, except in pursuit of the business of the commission.

(Added to NRS by 1999, 2729; A 2001, 568)

NRS 281.4645 Commission counsel: Duties; legal advice; appointment of deputy attorney general to perform tasks under certain circumstances.

1. The commission counsel is the legal adviser to the commission. For each opinion of the commission, the commission counsel shall prepare, at the direction of the commission, the appropriate findings of fact and conclusions as to relevant standards and the propriety of particular conduct within the time set forth in subsection 4 of NRS 281.511. The commission counsel shall not issue written opinions concerning the applicability of the statutory ethical standards to a given set of facts and circumstances except as directed by the commission.

2. The commission may rely upon the legal advice of the commission counsel in conducting its daily operations.

3. If the commission counsel is prohibited from acting on a particular matter pursuant to NRS 281.501, he shall disclose the reasons therefor to the chairman and the attorney general shall appoint a deputy to act in the place of the commission counsel for that particular matter.

(Added to NRS by 1977, 1107; A 1985, 2126; 1999, 2743)—(Substituted in revision for NRS 281.531)

NRS 281.465 Jurisdiction.

1. The commission has jurisdiction to investigate and take appropriate action regarding an alleged violation of:

(a) This chapter by a public officer or employee or former public officer or employee in any proceeding commenced by:

- (1) The filing of a request for an opinion with the commission; or
- (2) The commission on its own motion.

(b) NRS 294A.345 or 294A.346 in any proceeding commenced by the filing of a request for an opinion pursuant thereto.

2. The provisions of paragraph (a) of subsection 1 apply to a public officer or employee who:

(a) Currently holds public office or is publicly employed at the commencement of proceedings against him.

(b) Resigns or otherwise leaves his public office or employment:

- (1) After the commencement of proceedings against him; or
- (2) Within 1 year after the alleged violation or reasonable discovery of the alleged violation.

(Added to NRS by 1995, 2443; A 1997, 256; 1999, 2732)

NRS 281.471 Duties of commission; inclusion of annotations of abstracts and opinions of commission in Nevada Revised Statutes. The commission shall:

1. Adopt procedural regulations:

- (a) To facilitate the receipt of inquiries by the commission;
- (b) For the filing of a request for an opinion with the commission;
- (c) For the withdrawal of a request for an opinion by the person who filed the request; and

(d) To facilitate the prompt rendition of opinions by the commission.

2. Prescribe, by regulation, forms and procedures for the submission of statements of financial disclosure and statements of acknowledgment filed by public officers pursuant to NRS 281.552, maintain files of such statements and make the statements available for public inspection.

3. Cause the making of such investigations as are reasonable and necessary for the rendition of its opinions pursuant to this chapter.

4. Inform the attorney general or district attorney of all cases of noncompliance with the requirements of this chapter.

5. Recommend to the legislature such further legislation as the commission considers desirable or necessary to promote and maintain high standards of ethical conduct in government.

6. Publish a manual for the use of public officers and employees that contains:

(a) Hypothetical opinions which are abstracted from opinions rendered pursuant to subsection 1 of NRS 281.511, for the future guidance of all persons concerned with ethical standards in government;

(b) Abstracts of selected opinions rendered pursuant to subsection 2 of NRS 281.511; and

(c) An abstract of the requirements of this chapter.

The legislative counsel shall prepare annotations to this chapter for inclusion in the Nevada Revised Statutes based on the abstracts and published opinions of the commission.

(Added to NRS by 1977, 1105; A 1985, 2124; 1991, 1595; 1999, 2732)

NRS 281.475 Oaths; written requests and subpoenas for attendance and production of books and papers.

1. The chairman and vice chairman of the commission may administer oaths.

2. The commission, upon majority vote, may issue a subpoena to compel the attendance of a witness and the production of books and papers. Upon the request of the executive director or the public officer or public employee who is the subject of a request for an opinion, the chairman or, in his absence, the vice chairman, may issue a subpoena to compel the attendance of a witness and the production of books and papers.

3. Before issuing a subpoena to a public officer or public employee who is the subject of a request for an opinion, the executive director shall submit a written request to the public officer or public employee requesting:

(a) His appearance as a witness; or

(b) His production of any books and papers relating to the request for an opinion.

4. Each written request submitted by the executive director pursuant to subsection 3 must specify the time and place for the attendance of the public officer or public employee or the production of any books and papers, and designate with certainty the books and papers requested, if any. If the public officer or public employee fails or refuses to attend at the time and place specified or produce the books and papers requested by the executive director within 5 business days after receipt of the request, the chairman may issue the subpoena. Failure of the public officer or public employee to comply with the written request of the executive director constitutes good cause for extension of the time set forth in subsections 3 and 4 of NRS 281.511.

5. If any witness refuses to attend, testify or produce any books and papers as required by the subpoena, the chairman of the commission may report to the district court by petition, setting forth that:

(a) Due notice has been given of the time and place of attendance of the witness or the production of the books and papers;

(b) The witness has been subpoenaed by the commission pursuant to this section; and

(c) The witness has failed or refused to attend or produce the books and papers required by the subpoena before the commission, or has refused to answer questions propounded to him, and asking for an order of the court compelling the witness to attend and testify or produce the books and papers before the commission.

6. Except as otherwise provided in this subsection, upon such a petition, the court shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days after the date of the order, and then and there show cause why he has not attended, testified or produced the books or papers before the commission. If the witness has been subpoenaed by the commission in response to a request for an opinion filed pursuant to NRS 294A.345 or 294A.346, the court shall direct the witness to appear before the court as expeditiously as possible to allow the commission to render its opinion within the time required by NRS 281.477. A certified copy of the order must be served upon the witness.

7. If it appears to the court that the subpoena was regularly issued by the commission, the court shall enter an order that the witness appear before the commission, at the time and place fixed in the order, and testify or produce the required books and papers. Upon failure to obey the order, the witness must be dealt with as for contempt of court.

(Added to NRS by 1991, 1591; A 1997, 257; 1999, 2733)

NRS 281.477 Public hearing on request for opinion as to whether person committed act to impede success of political campaign: Request; notice; response; continuance; actions of commission; judicial review of final opinion.

1. If a request for an opinion is filed with the commission pursuant to NRS 294A.345 or 294A.346, the commission shall conduct a public hearing on the request. Except as otherwise provided in subsection 6, the hearing must be held as expeditiously as possible, but not later than 15 days after the receipt of the request for the opinion.

2. Such a request must be accompanied by all evidence and arguments to be offered by the requester concerning the issues related to the request. Except as otherwise provided in this subsection, if such evidence and arguments are not submitted with the request, the commission may:

(a) Draw any conclusions it deems appropriate from the failure of the person or group of persons requesting the opinion to submit the evidence and arguments, other than a conclusion that a person alleged to have violated NRS 294A.345 acted with actual malice; and

(b) Decline to render an opinion.

The provisions of this subsection do not prohibit the commission from considering evidence or arguments presented by the requester after submission of the request for an opinion if the commission determines that consideration of such evidence or arguments is in the interest of justice.

3. The commission shall immediately notify any person alleged to have violated NRS 294A.345 or 294A.346 that such an opinion has been requested by the most expedient means possible. If notice is given orally by telephone or in any other manner, a second notice must be given in writing not later than the next calendar day by facsimile machine or overnight mail. The notice must include the time and place of the commission's hearing on the matter.

4. A person notified pursuant to subsection 3 shall submit a response to the commission not later than the close of business on the second business day following the receipt of the notice. The response must be accompanied by any evidence concerning the issues related to the request that the person has in his possession or may obtain without undue financial hardship. Except as otherwise provided in this subsection, if such evidence is not submitted within that time, the commission may:

(a) Draw any conclusions it deems appropriate from the failure of that person to submit the evidence and argument; and

(b) Prohibit that person from responding and presenting evidence at the hearing.

The provisions of this subsection do not prohibit the commission from allowing that person to respond and present evidence or arguments, or both, after the close of business on the second business day if the commission determines that consideration of such evidence or arguments is in the interest of justice.

5. Except as otherwise provided in subsection 4, the commission shall allow any person alleged to have violated NRS 294A.345 or 294A.346 to:

(a) Be represented by counsel; and

(b) Hear the evidence presented to the commission and respond and present evidence on his own behalf.

6. At the request of:

(a) The person or group of persons that filed the request for the opinion pursuant to NRS 294A.345 or 294A.346; or

(b) The person alleged to have violated the provisions of NRS 294A.345 or 294A.346,

the commission may grant a continuance of a hearing held pursuant to the provisions of this section upon a showing of the existence of extraordinary circumstances that would prohibit the commission from rendering a fair and impartial opinion. A continuance may be granted for not more than 15 days. Not more than one continuance may be granted by the commission pursuant to this subsection.

7. The person or group of persons that filed the request for the opinion pursuant to NRS 294A.345 or 294A.346 has the burden of proving the elements of the offense, including that a person alleged to have violated NRS 294A.345 acted with actual malice. The existence of actual malice may not be presumed. A final opinion of the commission rendered pursuant to this section must be supported by clear and convincing evidence. In addition to the other requirements for issuing an opinion pursuant to this subsection, the commission shall not render a final opinion determining that a person has violated NRS 294A.345 unless the commission makes specific findings that:

(a) The person caused to be published a false statement of fact concerning a candidate;

(b) The person acted with actual malice in causing the false statement to be published.

(c) The person acted with the intent to impede the success of the campaign of the candidate in causing the false statement to be published; and

(d) The publication of the false statement did in fact impede the success of the campaign of the candidate.

In addition to the other requirements for issuing an opinion pursuant to this subsection, the commission shall not render a final opinion determining that a person has violated NRS 294A.346 unless a finding that each of the elements of the offense has been proven receives the affirmative vote of two-thirds of the commission.

8. The commission shall render its opinion, or decline to render an opinion, as expeditiously as possible, but not later than 3 days after the date of the hearing. If additional time is required to determine the state of mind or the intent of the person alleged to have violated the provisions of NRS 294A.345 or 294A.346 or to determine the amount of any civil penalty that may be imposed pursuant to NRS 281.551, the commission may continue its jurisdiction to investigate those issues but shall render its opinion as to the truth or falsity of the statement made concerning the candidate or the ballot question or its opinion as to whether the person impeded the success of the campaign or induced another person to impede the success of the

campaign. If the commission continues its jurisdiction pursuant to this subsection, it may render a final opinion after the time set forth in this subsection.

9. A final opinion of the commission rendered pursuant to this section is subject to judicial review pursuant to NRS 233B.130. The district court shall give a petition for judicial review of a final opinion of the commission priority over other civil matters that are not expressly given priority by law. Notwithstanding the provisions of NRS 233B.130, the court may provide for such expedited review of the final opinion, including shortened periods for filing documents, as it deems appropriate for the circumstances.

10. Each request for an opinion filed pursuant to NRS 294A.345 or 294A.346, each opinion rendered by the commission pursuant thereto and any motion, evidence or record of a hearing relating to the request are public and must be open to inspection pursuant to NRS 239.010.

11. For the purposes of NRS 41.032, the members of the commission and its employees shall be deemed to be exercising or performing a discretionary function or duty when taking any action related to the rendering of an opinion pursuant to this section.

12. Except as otherwise provided in this section, a meeting or hearing held by the commission to carry out the provisions of this section and the commission's deliberations on the information or evidence are not subject to any provision of chapter 241 of NRS.

13. As used in this section:

(a) "Actual malice" has the meaning ascribed to it in NRS 294A.345.

(b) "Publish" has the meaning ascribed to it in NRS 294A.345.

(Added to NRS by 1997, 254; A 1999, 2561, 2734; 2001, 199)

ADMINISTRATIVE REGULATIONS.

Practice and procedure governing requests for opinions, NAC 281.093-281.223

COMMISSION ON ETHICS OPINIONS.

Reaffirmation of a previous opinion finding violation and imposing civil penalty. In a previous opinion (CEO 98-17 (1-21-1999)) requested pursuant to NRS 281.477, where: (1) Mr. Brown and Mr. Bergstrom were campaigning for the office of constable of the City of North Las Vegas; (2) Mr. Brown, the incumbent, stated in a campaign flier to promote his candidacy that he was the only qualified candidate for the position and, in comparing his qualifications to Mr. Bergstrom's, stated that Mr. Bergstrom did not have any record of P.O.S.T. certification and that such certification was required to be the constable; and (3) Mr. Brown knew that the statement in his flier that the constable is required to have P.O.S.T. certification was false and that distribution to voters was timed so Mr. Bergstrom would have no opportunity to respond, the commission found that Mr. Brown violated NRS 294A.345 and imposed a civil penalty of \$10,000 against him pursuant to NRS 281.551 because he acted with actual malice and had the intent to impede the success of Mr. Bergstrom's campaign when he distributed his campaign flier containing false statements. On a rehearing of the matter, the commission found that the office of constable of the City of North Las Vegas is an elected position and although NAC 481.040 and 481.050 require appointed peace

officers to have P.O.S.T. certification, NAC 481.036 exempts an elected peace officer from that requirement. Thus, the commission reaffirmed its previous opinion in this matter, including the civil penalty. In re Brown and Kincaid, CEO 98-17 (1-3-2000)

No clear and convincing evidence of any element of statute. Where Mr. Copelan included statements in a newspaper editorial concerning Mr. Murphy, who was a candidate for mayor of West Wendover, the commission on ethics opined that Mr. Murphy failed to meet the burden of proof required by NRS 281.477 to find a violation of NRS 294A.345. The commission stated that there was no clear and convincing evidence presented on which the commission could make specific findings that Mr. Copelan: (1) caused to be published a false statement of fact concerning Mr. Murphy that was prohibited by NRS 294A.345 because Mr. Copelan's published remarks about Mr. Murphy were clearly labeled an "opinion" and therefore the readers of the statements would know that the content was political commentary and the writer's opinion; (2) acted with actual malice in causing such false statement to be published; (3) acted with the intent to impede the success of Mr. Murphy's campaign in causing such a false statement to be published; and (4) actually impeded the success of Mr. Murphy's campaign in causing such a false statement to be published. In re Campaign of Murphy, CEO 01-18 (9-7-2001)

Candidates failed to meet their burden of proof for campaign practices violation. Where Concerned Citizens of Mesquite, a politically active citizens group, wrote and paid for the publishing in a local weekly newspaper of several political advertisements and published and distributed a newsletter that contained statements concerning three candidates for the City Council of Mesquite, the commission on ethics opined that the candidates failed to meet the burden of proof required by NRS 281.477 to find a violation of NRS 294A.345. Noting that political disagreement does not amount to a campaign practices violation pursuant to NRS 294A.345, the commission stated that there was no clear and convincing evidence presented on which the commission could make specific findings that Concerned Citizens of Mesquite: (1) caused to be published a false statement of fact concerning the candidates that was prohibited by NRS 294A.345 because the published statements were merely statements of political opinion by the Committee, which is protected speech under the First Amendment; (2) acted with actual malice in causing such false statement to be published; (3) acted with the intent to impede the success of the candidates' campaigns in causing such a false statement to be published; and (4) actually impeded the success of the candidates' campaigns in causing such a false statement to be published. In re Campaigns of Bales, Lindsay and Strohl, CEO 01-20 (9-12-2001)

Statute contains no exception to 10-day filing requirement. Although noting concern where Concerned Citizens of Mesquite, a politically active citizens group, published as a statement of fact an inaccurate statement regarding the positions of three candidates for the City Council of Mesquite on a particular political issue without investigating the accuracy of the statement, the commission on ethics opined that it lacked jurisdiction to render an opinion concerning the false statement of fact because the candidates failed to timely file the request for an opinion with the commission. The commission stated that NRS 281.477 does not contain any exception to the requirement that a request for an opinion pursuant to that section must be filed within 10 days after the alleged false statement of fact has been published. In re Campaigns of Bales, Lindsay and Strohl, CEO 01-20 (9-12-2001), see also In re Campaign of Hardy, CEO 01-21 (9-18-2001)

Reelected candidate failed to prove that publication of false statement of fact impeded success of his campaign. Where Mr. Hardy was a candidate for reelection to the Mesquite City Council and the Committee for Checks and Balances, a politically active citizens group, caused to be published in a local weekly newspaper a political advertisement that included a statement that Mr. Hardy "raised your personal property taxes by 170% last year," the commission on ethics found that the Committee for Checks and Balances did not violate NRS 294A.345 because Mr. Hardy failed to meet his burden of proving by clear and

convincing evidence each element of NRS 294A.345, as required by NRS 281.477. The commission found that Mr. Hardy met his burden of proving by clear and convincing evidence the following three elements: (1) that the statement that the Committee caused to be published concerning Mr. Hardy was a false statement of fact because the increase in property taxes on which Mr. Hardy voted was less than the percentage indicated in the advertisement and the City Council, of which Mr. Hardy was a member, only increased taxes by 98.7 percent during the previous year; (2) that the Committee acted with reckless disregard for whether the published statement was true or false, and therefore with actual malice, because testimony indicated that the Committee published the advertisement without proofreading it to verify its truthfulness; and (3) in causing the false statement to be published, the Committee acted with the intent to impede the success of Mr. Hardy's campaign because the Committee published the advertisement in an effort to obstruct Mr. Hardy's reelection. However, the commission found that Mr. Hardy did not meet his burden of proving by clear and convincing evidence that the publication of the false statement did, in fact, impede the success of his campaign because Mr. Hardy's campaign was successful and he was reelected. In re Campaign of Hardy, CEO 01-21 (9-18-2001)

Request for opinion not timely filed in proper form. Where (1) Senior Citizens for Change, a politically active citizens group, caused to be published on May 24, 2001, in a local weekly newspaper a political advertisement that included statements concerning Mr. Hardy, who was a candidate for reelection to the Mesquite City Council; and (2) Mr. Hardy filed his request for an opinion on the matter with the commission on June 4, 2001, and filed the evidence to be offered in connection with the opinion request on June 5, 2001, the commission on ethics found that Senior Citizens for Change did not violate NRS 294A.345 because Mr. Hardy failed to file his request for an opinion on the matter, as authorized pursuant to NRS 294A.345, in proper form within 10 days after the date on which the false statement of fact was alleged to have been made. Pursuant to NRS 281.477 and a regulation adopted by the commission, a request for such an opinion must be accompanied by all evidence and argument to be offered by the requester concerning the issues related to the request. In re Campaign of Hardy, CEO 01-21 (9-18-2001)

No violation where reelected candidate failed to prove that publication of false statement of fact impeded success of his campaign. Where Mr. Hackleman was a candidate for reelection to the Mesquite City Council and the Committee for Checks and Balances, a politically active citizens group, caused to be published in a local weekly newspaper a political advertisement that included a statement that Mr. Hackleman "raised your personal property taxes by 170% last year,"

GENERAL PROVISIONS

281.481

the commission on ethics found that the Committee for Checks and Balances did not violate NRS 294A.345 because Mr. Hackleman failed to meet his burden of proving by clear and convincing evidence each element of NRS 294A.345, as required by NRS 281.477. The commission found that Mr. Hackleman met his burden of proving by clear and convincing evidence the following three elements: (1) that the statement that the Committee caused to be published concerning Mr. Hackleman was a false statement of fact because Mr. Hackleman, who had been appointed to the Mesquite City Council in late 2000, had not been a member of the City Council when the tax increases had been approved; (2) that the Committee acted with reckless disregard for whether the published statement

was true or false, and therefore with actual malice, because testimony indicated that the Committee published the advertisement without proofreading it to verify its truthfulness; and (3) in causing the false statement to be published, the Committee acted with the intent to impede the success of Mr. Hackleman's campaign because the Committee published the advertisement in an effort to obstruct Mr. Hackleman's reelection. However, the commission found that Mr. Hackleman did not meet his burden of proving by clear and convincing evidence that the publication of the false statement did, in fact, impede the success of his campaign because Mr. Hackleman's campaign was successful and he was reelected. In re Campaign of Hackleman, CEO 01-23 (9-18-2001)

CODE OF ETHICAL STANDARDS

NRS 281.481 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any member of his household, any business entity in which he has a significant pecuniary interest, or any other person. As used in this subsection, "unwarranted" means without justification or adequate reason.

3. A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any private business in which he has a significant pecuniary interest.

4. A public officer or employee shall not accept any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of his duties as a public officer or employee.

5. If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.

6. A public officer or employee shall not suppress any governmental report or other document because it might tend to affect unfavorably his pecuniary interests.

7. A public officer or employee, other than a member of the legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of his public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

8. A member of the legislature shall not:

(a) Use governmental time, property, equipment or other facility for a nongovernmental purpose or for the private benefit of himself or any other person. This paragraph does not prohibit:

(1) A limited use of state property and resources for personal purposes if:

(I) The use does not interfere with the performance of his public duties;

(II) The cost or value related to the use is nominal; and

(III) The use does not create the appearance of impropriety;

(2) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(3) The use of telephones or other means of communication if there is not a special charge for that use.

(b) Require or authorize a legislative employee, while on duty, to perform personal services or assist in a private activity, except:

(1) In unusual and infrequent situations where the employee's service is reasonably necessary to permit the legislator or legislative employee to perform his official duties; or

(2) Where such service has otherwise been established as legislative policy.

9. A public officer or employee shall not attempt to benefit his personal or financial interest through the influence of a subordinate.

10. A public officer or employee shall not seek other employment or contracts through the use of his official position.

(Added to NRS by 1977, 1105; A 1987, 2094; 1991, 1595; 1993, 2243; 1997, 3324; 1999, 2736)

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Officers and Public Employees ⇐ 110.

WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 197 to 204.

NEVADA CASES.

Provisions of section are mandatory. The amendment of NRS 281.481 in 1991 to state that the code of ethical standards was established to "govern" rather than "guide" the conduct of public officers and employees showed a clear legislative intent to make the amended section mandatory. Thus, the provisions of the section are mandatory rather than directory and permissive. *Nevada Comm'n on Ethics v. JMA/Lucchesi*, 110 Nev. 1, 866 P.2d 297 (1994)

ATTORNEY GENERAL'S OPINIONS.

Rental of specialized equipment from employee by department of transportation did not violate statute. Rental by the department of high-

ways (now the department of transportation) of specialized equipment from an employee, where no extra compensation would be paid for personal services of the employee and the rental rate would be less than for similar equipment obtained elsewhere, would not violate the provisions of former NRS 408.890 (cf. NRS 408.353), which prohibits such employees from having an interest in highway contracts, or the former provisions of NRS 281.230 (cf. NRS 281.481), which prohibits state employees from receiving compensation inconsistent with loyal service to the people of the state. AGO 366 (12-12-1966)

Justice of the peace prohibited from selling insurance to a county on a commission basis. Justices of the peace, pursuant to Nev. Art. 6, § 1, relating to the judicial power of the state, and Nev. Art. 6, § 8, which provides for justices of the peace, are public or state officers who would be prohibited under the provisions of former NRS 269.050 (cf. NRS 269.072), relating to contracts of

GENERAL PROVISIONS

281.481

town officers in discharge of official duties, and the former provisions of NRS 281.230 (cf. NRS 281.481), relating to contracts of the state or township officers being compensated in a manner inconsistent with loyal service, from selling insurance to a county on a commission basis. AGO 379 (1-31-1967)

Manager of Las Vegas Valley Water District prohibited from serving as counsel to former Colorado River commission at the same time. A person is prohibited by the former provisions of NRS 281.230 (cf. NRS 281.481) from serving as manager of the Las Vegas Valley Water District and at the same time serving under a contract as counsel to the Colorado River commission (now the Colorado River commission of Nevada) because a conflict of interest may arise from the fact that the district and the commission are involved in contractual relations with each other. The fact that one so appointed agrees to withdraw advice if a conflict should arise does not alter the statutory prohibition. AGO 503 (4-24-1968)

Neither statutory nor common law was violated when a state officer who held a minimal interest in a corporation which contracted with the state did not participate in or directly benefit from the transaction. Where a state officer held a minimal interest in a private corporation that contracted with the state but did not participate in or directly benefit from the transaction, he did not violate the provisions of former NRS 281.220 or the former provisions of 281.230 (cf. NRS 281.481), prohibiting conflicts of interest by the state and other public officers, or any common-law prohibition. AGO 16 (3-2-1971), cited, AGO 98-29 (11-5-1998)

County employees who are not county officers may serve as trustees for the county school district. County employees who are not county officers may serve as trustees for the county school district because the former provisions of NRS 281.230 (cf. NRS 281.481) do not prohibit such service since it is not inconsistent with loyal service to the people, and NRS 281.127, limiting the salaries of public officers and employees, is applicable only to services rendered to the state. AGO 22 (5-20-1971)

School teacher may serve as justice of the peace as long as neither position interferes with the duties of the other. Under the former provisions of NRS 281.230 (cf. NRS 281.481), prohibiting a public officer or employee from other employment inconsistent with loyal service to the people, a school teacher may also serve as a justice of the peace as long as neither position interferes with the duties required of the other. AGO 50 (10-26-1971)

County engineer may not represent private clients before the county planning commission of the employer county. Under the former provisions of NRS 281.230 (cf. NRS 281.481), prohibiting conflicts of interest in public employment, a county engineer may not represent private clients

before the county planning commission of the employer county. AGO 94 (8-21-1972), cited, AGO 89-14 (9-26-1989)

Appropriateness of the secretary of state voting as a member of the state board of examiners to approve the funding for a contract awarded to a person from whom he had received campaign contributions. Where the secretary of state (see NRS ch. 225) received small campaign contributions in previous years from a person whose contract with the state is subject to approval by the state board of examiners (see NRS 353.010), and where the state board of examiners does not actually choose the recipient of the contract but only approves the funding for the contract, the secretary of state does not violate NRS 281.481 by having accepted those campaign contributions and thereafter voting to approve the funding on the contract awarded to the contributor. (See also NRS 281.501.) AGO 98-29 (11-5-1998)

Appropriateness of the secretary of state voting as a member of the state board of examiners to approve the funding for a contract awarded to his former employer with whom he maintains a retirement account. Where a bank which formerly employed the secretary of state (see NRS ch. 225), and at which the secretary of state has a retirement account, has a contract with the state that is pending approval by the state board of examiners (see NRS 353.010), the secretary of state does not need to disclose a possible conflict of interest and abstain from voting on the contract because: (1) since the board is not awarding the contract but only approving the funding for the contract, and since the bank is entitled to the funding as it has already been awarded the contract, the bank would not be receiving any unwarranted privilege, preference or advantage pursuant to NRS 281.481 from the vote of the secretary of state; (2) the maintenance of a retirement account at the bank does not give the secretary of state a significant pecuniary interest in the bank pursuant to NRS 281.481 or 281.501; and (3) the vote of the secretary of state would not be affected by his commitment in a private capacity to the interest of the bank (see NRS 281.501) since the bank is not his current employer and his relationship with the bank is an arm's length business relationship. AGO 98-29 (11-5-1998)

Appropriateness of the secretary of state voting as a member of the state board of examiners to approve the funding for a contract awarded to his personal friend and accountant. Where a personal friend and accountant of the secretary of state (see NRS ch. 225) has a contract with the state that is pending approval by the state board of examiners (see NRS 353.010), the secretary of state does not need to disclose a possible conflict of interest and abstain from voting on the contract where the friendship and business association does not give the secretary of state a pecuniary interest and does not concern a commitment in a private capacity to the interests of others (see NRS 281.481 and 281.501) since the secretary of state:

(1) does not receive discounted services from the accountant; (2) is billed in the same manner as other clients; and (3) has no ownership or financial interest in the business of the accountant. AGO 98-29 (11-5-1998)

COMMISSION ON ETHICS OPINIONS.

Campaign contributions may constitute a gift for purposes of statute where the contribution would improperly influence a reasonable person in the position of the recipient of the contribution to depart from faithful and impartial discharge of his public duties. Stating that it was not prepared to issue a blanket statement that properly disclosed campaign contributions will never qualify as a gift for the purposes of NRS 281.481(1), the commission on ethics opined that the test is whether the campaign contribution would improperly influence a reasonable person in the position of the recipient of the contribution to depart from the faithful and impartial discharge of his public duties. The commission stated that the test involves the consideration of such factors as the amount of the contribution, the identity of the donor and the timing of the gift. Abstract, CEO 95-51 (6-6-1997), cited, In re McDonald, CEO 99-61 (9-18-2000), In re Boggs-McDonald, CEO 01-12 (8-8-2001)

Campaign contributions were not gift that would tend improperly to influence a reasonable person in a public officer's place to depart from faithful and impartial discharge of public duties. Where Mr. Wood, who was a member of the Henderson City Council, placed an item on the agenda relating to an amendment of a settlement agreement that the city had entered into with persons who had made campaign contributions to Mr. Wood which amounted to 6 percent of his total campaign budget, the commission on ethics found that although Mr. Wood's action operated for the direct benefit of those contributors, Mr. Wood had not accepted a gift which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties in violation of NRS 281.481(1) because: (1) there was no evidence of an express quid pro quo between Mr. Wood and those contributors; (2) the total amount of the campaign contributions from those contributors was a small percentage of Mr. Wood's total campaign budget; (3) the contributors had properly reported the campaign contributions; and (4) Mr. Wood had a colorable reason to seek review of the settlement agreement. Abstract, CEO 95-51 (6-6-1997), cited, In re McDonald, CEO, 9961 (9-182000) In re Boggs-McDonald, CEO 01-12 (8-8-2001)

No unwarranted privileges, preferences, exemptions or advantages obtained for contributors to campaign of public officer. Where Mr. Wood, who was a member of the Henderson City Council, placed an item on the agenda relating to an amendment to a settlement agreement that the City had entered into with persons who had made campaign contributions to Mr. Wood which amounted to six percent of his total cam-

paign budget, the commission on ethics found that Mr. Wood did not violate NRS 281.481(2) because Mr. Wood had a colorable reason to seek review of the settlement agreement and therefore whatever privileges, preferences, exemptions or advantages that he obtained for the contributors were not unwarranted. Abstract, CEO 95-51 (6-6-1997)

Former public employee entitled to special relief from strict application of statutory cooling-off period. Where a public employee resigned from his position with a division of a state department and accepted employment as an administrator at a school that conducts pre-licensing and continuing education for obtaining and maintaining a subject area license, which is an industry and school of which the curriculum is regulated by his former employer, the commission on ethics found that the statutory cooling-off period in NRS 281.236(3) would prohibit the public employee from commencing his new employment for 1 year following termination of his public employment because his former job duties included the review, monitoring and occasional approval of the faculty and curriculum of regulated schools, including the school with which he accepted the position of administrator. However, the commission found that the public employee's employment was entitled to special relief pursuant to NRS 281.236(4) because: (1) his employment was not contrary to the best interests of the public and the continued integrity of state government because it did not threaten the competitors of the school nor give the school an unfair advantage or knowledge; and (2) there was no evidence that the public employee violated the code of ethical standards prescribed in NRS 281.481 in the manner in which he entered into employment with the school because he did not possess any special information otherwise unavailable publicly or did not use any influence that he may have had as a result of his public employment to obtain the private employment. Abstract, CEO 95-61 (5-6-1996)

Unwarranted preference or advantage where public officer sought preferential room rate, received free rooms and then sought reimbursement for rooms. Where Mr. Bowles, who was the clerk and treasurer for Mineral County, sought a preferential room rate from the management of a hotel for rooms used for his attendance and that of two county employees at a training seminar, was given free rooms and then sought state reimbursement for those rooms, the commission on ethics opined that Mr. Bowles sought and received an unwarranted preference or advantage for himself in violation of NRS 281.481(2) in the way that he procured free rooms from the management of the hotel and by seeking reimbursement from the state for those rooms and retaining some of the reimbursed money without authorization. In re Bowles, CEO 96-49 (6-5-1997)

Violation where public officer removed money from office cash drawer even though officer replaced the money. Where Mr. Bowles, who was the clerk and treasurer for Mineral

County, removed money from an office cash drawer on a Saturday to pay for food for a political party picnic and attempted to return the money on the following Monday morning, the commission on ethics found that he violated NRS 281.481(7) because he used public money for his personal use, treating the cash drawer as his personal automated teller machine. In re Bowles, CEO 96-49 (6-5-1997)

Violation for removing money from office cash drawer even though money was used for good cause and was repaid in full. Where: (1) Mr. Bowles, who was the clerk and treasurer for Mineral County, removed money from an office cash drawer to cover the expenses of a trip for a high school booster club for which he served as treasurer; (2) Mr. Bowles placed a check in the cash drawer to replace the removed money and left a note stating that the check was drawn against the club's account, which contained insufficient funds to cover the check; and (3) the check was held by the treasurer's office for several weeks until Mr. Bowles replaced it with cash, the commission on ethics found that even though the money was taken for a good cause and was repaid in full several weeks later, Mr. Bowles violated NRS 281.481(7) by personally benefiting from the use of the office cash drawer because he could not have obtained the funds any other way. The commission stated that NRS 281.481(7) draws a clear and bright line: public property, including public money, belongs to the public and cannot be used for personal benefit or gain. In re Bowles, CEO 96-49 (6-5-1997)

Provision applies to personal interests as well as financial interests. The legislature intended NRS 281.481(7) to reach beyond only financial interests by also referring to "personal" interests. The inquiry of the commission on ethics regarding NRS 281.481(7) goes beyond whether a public officer steals or embezzles money or resources to whether the public officer used the public's resources to benefit himself in any way. In re Bowles, CEO 96-49 (6-5-1997)

Violation where political officer retained reimbursement money belonging to county to make political statement. Where: (1) Mr. Bowles, who was the clerk and treasurer for Mineral County, retained reimbursement money from the state for a training seminar attended by him and two colleagues that should have been paid to the county; (2) Mr. Bowles testified that he kept the money to make a point to one of the members of the board of county commissioners who opposed Mr. Bowles' position regarding county budget issues; and (3) Mr. Bowles repaid some of the money to the county after legal action was threatened, the commission on ethics found that although Mr. Bowles did not realize any real permanent financial benefit by retaining the reimbursement money, Mr. Bowles achieved a personal benefit in violation of NRS 281.481(7) by using the money to make a personal political statement against the county commissioner. In re Bowles, CEO 96-49 (6-5-1997)

Willful violation found where county treasurer used county money for personal purposes. Where the commission on ethics found that Mr. Bowles, who was the clerk and treasurer for Mineral County, violated NRS 281.481 by: (1) using money from an office cash drawer even though he later replaced the money; (2) seeking a preferential room rate for attendance at a training seminar; and (3) seeking and retaining reimbursement money for the seminar that should have been paid to the county in order to make a political statement, the commission on ethics found that the violations of NRS 281.481 by Mr. Bowles were willful because a reasonable person in Mr. Bowles' place would have known that public money cannot and should not be used for personal purposes under any circumstances and Mr. Bowles deliberately and intentionally used public money as his own. As a result, the commission assessed a civil penalty of \$4,000 against Mr. Bowles. (See NRS 281.551.) In re Bowles, CEO 96-49 (6-5-1997), cited, In re McDonald, CEO 00-41 (7-13-2001)

Use of government-issued cell phone for personal business violated statute. Although Mr. Breslow testified that he did not know and was never told that he could not use the cell phone issued for his use as mayor by the City of Sparks for personal calls, the commission found that Mr. Breslow violated NRS 281.481(7) when he used that cell phone for personal business. NRS 281.481(7) prohibits the use of a government-issued telephone if there is a special charge for that use and the evidence demonstrated that Mr. Breslow's use of the cell phone created special charges for the City of Sparks, including charges incurred for each incoming and outgoing call, additional charges for long distance calls and roaming charges. Although stating that government-issued cell phones serve a valuable purpose by allowing public officers and employees to conduct public business while away from their offices, the commission declared that these cell phones must only be used for official business and not for personal use. In re Breslow, CEO 98-21 (5-23-2000)

No use of position to grant or gain unwarranted promotion despite exercise of poor judgment. Mr. Countryman, inspector general for the department of prisons (DOP) (now the department of corrections) was a coworker and personal friend of Ms. Middleton. Based on Mr. Countryman's encouragement, Ms. Middleton applied for two openings for criminal investigators with DOP. Based on his specialized knowledge of the skills required for these positions, Mr. Countryman was asked to assist in reviewing the applications and make hiring recommendations to the director of DOP. Because of inconsistencies in the applications submitted by Ms. Middleton, the department of personnel sent Ms. Middleton a letter requesting clarification of the inconsistencies. Mr. Countryman testified that Ms. Middleton showed him the letter, he read the portions of the letter that Ms. Middleton had highlighted and, based on those

portions, he sent a response to the department of personnel recommending Ms. Middleton for the criminal investigator position. As a result of the inconsistencies in Ms. Middleton's applications, the department of personnel advised Mr. Countryman that Ms. Middleton was not eligible for the positions. Mr. Countryman told personnel that he was going to still allow Ms. Middleton to continue with the interview process although personnel had removed her name from the eligibility list. Finally, before the commission hearing, Mr. Countryman contacted the DOP recruiter whom he had assisted in reviewing the applications for the openings to question her about her recollection of their meeting regarding Ms. Middleton's application. The recruiter testified that she felt Mr. Countryman was attempting to persuade her to recall the circumstances of their meeting the way he remembered them. Although finding that Mr. Countryman exercised extremely poor judgment in reviewing Ms. Middleton's applications, writing the letter recommending Ms. Middleton for the position, allowing Ms. Middleton to continue with the application process after being told that she was ineligible for the position and contacting the DOP recruiter regarding her recollection of their meeting about Ms. Middleton's application, the commission opined that Mr. Countryman's actions did not rise to the level of an actual violation of NRS 281.481(2) and that there was also not sufficient evidence presented to conclude that Ms. Middleton used or attempted to use her friendship with Mr. Countryman to gain an unwarranted promotion in violation of NRS 281.481(2). In re Countryman and Middleton, CEO 98-28 (5-8-2000)

Mayor did not use his position to secure unwarranted privileges, preferences, exemptions or advantages for himself or his companies. Where (1) Mr. Griffin, the Mayor of Reno, owns several trade-related businesses, which have out-of-state competitors; (2) a request for money for the International Resource Center, which is a public agency which operates as a clearinghouse for information relating to international trade, was placed on the agenda of the Reno City Council; and (3) upon the advice of the city attorney, Mr. Griffin stated that he had no conflict of interest and voted in favor of the funding for the IRC, the commission on ethics found that Mr. Griffin did not use his position as mayor to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself or his companies as prohibited by NRS 281.481(2) because the evidence did not establish any type of relationship between Mr. Griffin or his companies and the IRC, the IRC is a broad-based organization that promotes other issues besides trade in northern Nevada and Mr. Griffin would not benefit any more by IRC's success than anyone else similarly situated. In re Griffin, CEO 98-29 (4-29-2000)

Substitute teacher prohibited from simultaneously holding a position as a school district trustee. Where the superintendent of personnel of a school district has final veto power over the

approval of the employment of substitute teachers and the board of trustees of the school district supervises the superintendent and has the power to terminate the superintendent's employment, the commission on ethics opined that NRS 281.481(2) prohibits a substitute teacher for the school district from simultaneously holding the position of trustee of the school district because, as a school board trustee, the teacher would be in the untenable position of having the power to hire and fire the superintendent, who is responsible for removing candidates from the list of substitute teachers, and thereby would be in the position to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself as a substitute teacher. The commission stated that the mere opportunity for an employer to effect undue or unwarranted influence over a subordinate to advance his own pecuniary interests would create an appearance of impropriety and therefore the teacher would have to resign from his employment with the school district as a substitute teacher or not accept a seat on the school board. Abstract, CEO 98-71 (1-3-2000)

No violation where the supervisors of certain city departments who were members of the same employee association as nonsupervisory employees did not participate in bargaining negotiations. Where the chiefs and deputy chiefs of city departments of police, detention and corrections are members of an employee association that consists of one bargaining unit containing supervisory and nonsupervisory employees but did not participate in any bargaining negotiations, the commission on ethics found that the chiefs and deputy chiefs did not violate NRS 281.481(1) and (2). However, until the association is divided into two bargaining units among supervisors and nonsupervisors as required by NRS 288.170, the commission stated that the chiefs and deputy chiefs must continue to refrain from any direct or indirect participation in any bargaining negotiations because: (1) there was a concern that the chiefs and deputy chiefs would use their position to do something improper with respect to bargaining to retain their membership in the association and thereby retain their economically beneficial health insurance retirement benefits; and (2) the possibility that the economic inducement to retain membership in the association might cause a reasonable person to not carry out the faithful discharge of his duties. Abstract, CEO 99-03 (11-18-1999)

Corporately sponsored automobile racing hobby. Where: (1) as a hobby, a public officer raced automobiles for a corporation; (2) the automobiles and other assets associated with the hobby were owned by the corporation; (3) the public officer received no compensation for racing the automobiles and any prize money won by the public officer was paid directly to the corporation; (4) to offset the cost of racing, the corporation accepted sponsorships from local businesses and associations; and (5) the public officer was not an officer or shareholder of the corporation, the com-

mission on ethics opined that such activities did not constitute a use by the public officer of his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages, as prohibited by NRS 281.481(2), as long as the sponsorships were not solicited from industries that the public officer regulated in his official capacity. Abstract, CEO 99-08 (1-3-2000)

Service by member of city council as uncompensated executive director of nonprofit corporation. If a member of a city council: (1) forms a nonprofit corporation to raise public and private funds to redevelop a local natural resource; and (2) serves as the uncompensated executive director for the corporation, the commission on ethics opined that to avoid any violation of NRS 281.481(2), the member must ensure that he does not use his position on the city council to secure or grant any unwarranted privileges or advantages for himself, any business entity in which he has a significant pecuniary interest, including the nonprofit corporation, or any other person or entity. Abstract, CEO 99-09 (1-24-2000)

Stock ownership of public employee's family in parent company of private company does not prevent employee from serving as unpaid member of advisory board of private company. Where a public employee of the State of Nevada who is also a member of a state commission desires to serve in an uncompensated capacity on an advisory board to the board of directors of a private company and the public employee's spouse and children own stock of the parent company of the private company, the commission on ethics opined that no provision of chapter 281 of NRS prohibited the public employee from serving on the advisory board. (See NRS 281.481.) Abstract, CEO 99-20 (11-30-1999)

Member of board of trustees of public hospital who owns electrical contracting company prohibited from bidding on hospital projects as subcontractor. Where a member of the board of hospital trustees for a public hospital is also a partner in a company that performs electrical contracting work, the commission on ethics found that NRS 281.481(2) would prohibit the member from bidding as an electrical subcontractor on hospital improvement projects that must be approved by the board because the member could use his position on the board to gain an unwarranted privilege for his company. (See also NRS 338.141.) In re Arrien, II, CEO 99-21 (2-1-2000)

Employee of state dairy commission may operate part-time business providing services to special fuel users. The commission on ethics found that a public employee who is employed by the state dairy commission as an area supervisor would not violate any ethical provision by opening a small part-time business out of his home that would provide services to special fuel users inside and outside Nevada but would not provide such

services to any person or business related to the dairy industry. (See NRS 281.230 and 281.481.) In re French, CEO 99-22 (1-29-2000)

Use of a state car by a public employee violated the section because the use had not been approved by the appropriate authority and created the appearance of impropriety. Where: (1) a public employee who is the sole inspector for a state board is required to always be on call to investigate industry-related emergencies; (2) the board provided the public employee with a state car and board policy authorized her to store the car at home and drive the car on official business on weekends and nights but otherwise required her to use her personal car for personal business; (3) the board encouraged the public employee to use the state car on personal outings if she was expecting an off-hour telephone call that required an immediate response; and (4) during off-hours and while awaiting a call for possible inspections the public employee used the state car to take her spouse and another couple to breakfast, the commission on ethics determined that the public employee's use of a state-owned vehicle for personal purposes violated NRS 281.481(7). Although the use of the state car did not interfere with the public employee's performance of her duties and it was more cost effective for the board to allow her to use a state car than provide her with a vehicular allowance, the commission found that, even though the public employee relied on a flawed agency policy allowing her use of the state car, her use of the vehicle had not been approved by the appropriate authority which, pursuant to the state administrative manual, was the director of the department of administration, and that her use of the state car created the appearance of impropriety, as demonstrated by the citizen's complaint that was the catalyst for the opinion request. Abstract, CEO 99-33 (2-8-2000)

No departure from faithful and impartial discharge of public duties where a trustee segregated himself from bond issuance deliberations involving his employer's bid. Where a member of a board of trustees of a district is employed as the sole representative for the local branch office of an investment firm and the investment firm is one of the candidates for selection by the board to underwrite a bond issue, the commission on ethics opined that the trustee did not engage in any activity that would tend to cause him to depart from the faithful and impartial discharge of his public duties as prohibited by NRS 281.481(1) because the trustee had taken appropriate steps to segregate himself from all bond issuance deliberations, thereby preventing any undue influence he might have made on the board's decisions regarding the wording of the request for proposals for underwriting the bonds and the choice of the bond counsel, financial consultants and investment firm. Abstracts, CEO 99-34, 99-35 (2-24-2000)

No improper use of position where a trustee segregated himself from bond issuance deliberations involving his employer's bid. Where a member of a board of trustees of a district is employed as the sole representative for the local branch office of an investment firm and the investment firm is one of the candidates for selection by the board to underwrite a bond issue, the commission on ethics opined that the trustee did not use his position as a trustee to secure or grant an unwarranted privilege, preference, exemption or advantage for himself or his employer as prohibited by NRS 281.481(2) because the trustee had taken appropriate steps to segregate himself from all bond issuance deliberations, thereby preventing any undue influence he might have made on the board's decisions regarding the wording of the request for proposals for underwriting the bonds and the choice of the bond counsel, financial consultants and investment firm. Abstracts, CEO 99-34, 99-35 (2-24-2000)

No participation as an agent of government by a trustee in negotiation of a potential contract between the board and the trustee's employer. Where a member of a board of trustees of a district is employed as the sole representative for the local branch office of an investment firm and the investment firm is one of the candidates for selection by the board to underwrite a bond issue, the commission on ethics opined that the trustee did not participate as an agent of the citizens of the city and the district in the negotiation of the potential contract between the board and his employer as prohibited by NRS 281.481(3) because the trustee had taken appropriate steps to segregate himself from all bond issuance deliberations, thereby preventing any undue influence he might have made on the board's decisions regarding the wording of the request for proposals for underwriting the bonds and the choice of the bond counsel, financial consultants and investment firm. Abstracts, CEO 99-34, 99-35 (2-24-2000)

No misuse of information where a trustee segregated himself from bond issuance deliberations involving his employer's bid. Where a member of a board of trustees of a district is employed as the sole representative for the local branch office of an investment firm and the investment firm is one of the candidates for selection by the board to underwrite a bond issue, the commission on ethics opined that the trustee did not use any information which by law or practice was not at the time available to people generally to further his or his employer's pecuniary interests as prohibited by NRS 281.481(5) because the trustee had taken appropriate steps to segregate himself from all bond issuance deliberations, thereby preventing any undue influence he might have made on the board's decisions regarding the wording of the request for proposals for underwriting the bonds and the choice of the bond counsel, financial consultants and investment firm. Abstracts, CEO 99-34, 99-35 (2-24-2000)

Use of government time, property, equipment or facility by officers and employees of county building department for nonprofit industry activities allowed because no personal or financial benefit. Where public officers and employees of a county building department (1) pay dues to be members of and volunteer their time without compensation to serve as officers, committee chairpersons, educational instructors and active supporters of nonprofit corporations which serve as forums for the public and private sectors of the building industry to discuss issues and develop and standardize building codes and regulations and which provide professional education and training to members of the industry; (2) solicited funds from members of the building industry to support the nonprofit organizations until the building department implemented a policy prohibiting such a practice; and (3) participated in some activities related to the nonprofit corporations during the business day and used some county resources, such as staff time, postage and telephones, for business of the nonprofit corporations, the commission on ethics opined that the public officers and employees did not violate NRS 281.481(7) because their use of governmental time, property, equipment or other facility for the nonprofit corporations did not benefit their personal or financial interests, they acted in good faith and their activities were within their job descriptions and were for the public benefit. In re Weber, Lynn, Franklin and Houck, CEO 99-36 (3-3-2000)

No just and sufficient cause to proceed based on lack of evidence. Where a request for an opinion alleged that Mr. Griffin, the mayor of Reno, violated NRS 281.481(2), (3) and (6) by conspiring with Ms. Bart, the executive director of the Reno/Tahoe Airport Authority, to implement a cargo operations facility that would benefit a business owned by Mr. Griffin, the commission on ethics found no just and sufficient cause to proceed in the matter based on a lack of evidence. (See NRS 281.511.) In re Griffin, CEO 99-44 (5-31-2000)

Board member should exercise caution in accepting financial benefits from organizations to which he and his spouse belong and which appear before the board. Where: (1) a member of a board of commissioners was appointed to that board by the governor based on the member's active involvement in activities in which the board is interested; (2) the member and his wife previously have been and are currently actively involved in efforts related to the board's responsibilities, including being members of and actively involved in organizations which have had and will likely continue to have matters before the board, including policy recommendations and requests for grant money; (3) the public officer holds a leadership position with one organization for which he does not receive any salary or compensation except reimbursement for travel expenses to one convention; and (4) other members of the board are also members of and actively

GENERAL PROVISIONS

281.481

participate in organizations related to the board's activities, the commission on ethics opined that the member must exercise caution in accepting any financial benefits, such as meals, gifts and accommodations, offered to him by the various organizations to which he and his wife belong so as not to compromise his integrity and his ability to exercise his duty as a member of the board to make impartial and fair-minded decisions. (See NRS 281.481(1).) Abstract, CEO 99-60 (2-25-2000)

Use of agency credit cards for personal expenses and failure to reimburse agency in timely manner constituted unwarranted advantage. Where Mr. Keene, who was the President and Chief Executive Officer of the Reno-Sparks Convention and Visitors Authority (RSCVA), used credit cards issued to him in his public capacity for personal purposes and failed to reimburse the RSCVA for those expenses in a timely manner, the commission on ethics opined that Mr. Keene violated NRS 281.481(2) because: (1) having an agency credit card at his disposal was an executive privilege, inherent in which was the obligation to use the agency's credit responsibly for the agency's benefit; (2) by charging thousands of dollars of his personal expenses to the RSCVA credit cards and failing to reimburse the RSCVA for those expenses, including the finance charges and late fees that were incurred, in a timely manner, Mr. Keene was advantaging and financially benefiting himself without regard for any detriment to the RSCVA; and (3) the evidence provided no justification or adequate reason for Mr. Keene's practice of using the RSCVA's credit for personal expenses and therefore the advantage and financial benefit that Mr. Keene enjoyed from this practice was unwarranted. In re Keene, CEO 00-11 (4-25-2002)

Use of agency credit cards for personal expenses and failure to reimburse agency in timely manner constituted use of governmental property to benefit personal financial interest. Where Mr. Keene, who was the President and Chief Executive Officer of the Reno-Sparks Convention and Visitors Authority (RSCVA), used credit cards issued to him in his public capacity for personal purposes and failed to reimburse the RSCVA in a timely manner for those expenses, including the finance charges and late fees that were incurred, the commission on ethics opined that Mr. Keene violated NRS 281.481(7) because Mr. Keene used the RSCVA's credit, which is the property of the RSCVA, to benefit his personal financial interests and there was no evidence that: (1) anyone in authority at the RSCVA had established a policy allowing the practice of charging personal expenses to RSCVA credit cards; and (2) the value related to Mr. Keene's personal use of RSCVA credit cards was anything but significant and created anything less than an appearance of impropriety. In re Keene, CEO 00-11 (4-25-2002)

Conditions under which public officer may participate in certain activities related to his former profession. Where a public officer wishes

to participate in certain activities relating to his former profession, the public officer has no authority over the business, entities or industry in which he was employed before holding public office and no such entity is likely to come before him as a public officer and the public officer did not use his title or position with the State of Nevada to secure his participation in the activities, the commission on ethics opined that the public officer may participate in the proposed activities if: (1) he uses vacation time to travel and participate in the activities; (2) he receives no compensation for his participation; (3) his lodging and meals will be provided to him in the same manner as lodging and meals are provided for others who are also participating in the activities; (4) he will be provided with an airline ticket for his travel to the activities; and (5) no public funds or resources or any public time of the public officer will be expended for the activities. (See NRS 281.481(1).) Abstract, CEO 00-16 (6-28-2000)

Participation of county building inspectors as compensated instructors in apprenticeship program would not improperly influence reasonable person in their position to depart from faithful and impartial discharge of their public duties. Where public employees who are employed as county building inspectors serve during their nonworking hours as compensated instructors for an accredited plumbing apprenticeship program sponsored by a nonprofit professional trade organization, the commission on ethics found that none of the facts presented in the opinion request suggested that the public employees are engaged in any activity that would tend improperly to influence a reasonable person in their position to depart from the faithful and impartial discharge of their public duties. (See NRS 281.481(1).) In re Daniels, DiBlasi and Troup, CEO 00-27, 00-28, 00-29 (8-28-2000)

County building inspectors who participated as compensated instructors in apprenticeship program did not use their public employment to secure unwarranted privileges, preferences, exemptions or advantages. Where public employees who are employed as county building inspectors serve during their nonworking hours as compensated instructors for an accredited plumbing apprenticeship program sponsored by a nonprofit professional trade organization, the commission on ethics found that none of the facts presented in the opinion request suggested that the public employees used their positions as county building inspectors to secure unwarranted privileges, preferences, exemptions or advantages for themselves, any member of their households, any business entity in which they have a significant pecuniary interest or any other person. (See NRS 281.481(2).) In re Daniels, DiBlasi and Troup, CEO 00-27, 00-28, 00-29 (8-28-2000)

County building inspectors who participated as compensated instructors in apprenticeship program did not receive any compensation from private source for performance of public

duties. Where public employees who are employed as county building inspectors serve during their nonworking hours as compensated instructors for an accredited plumbing apprenticeship program sponsored by a nonprofit professional trade organization, the commission on ethics found that none of the facts presented in the opinion request suggested that the public employees received any compensation from any private source for the performance of their duties as public employees. Instead, the commission noted that the facts established clearly: (1) the separate nature of their private activities as program instructors and their public responsibilities as county building inspectors; and (2) the great public benefit realized by their participation as program instructors. (See NRS 281.481(4).) In re Daniels, DiBlasi and Troup, CEO 00-27, 00-28, 00-29 (8-28-2000)

No violation of provision by city council member although his actions reflected poor judgment and violated city protocol. Where: (1) Ranger Building Corporation requested a special use permit from the City of Las Vegas for a tavern; (2) Councilman McDonald called city surveyors to his office and requested that they perform measurements to determine whether any other properties had uses that might affect the proposed special use; and (3) Councilman McDonald disclosed a conflict of interest and abstained from participating in or voting on the special use permit when it first came before the City Council for approval and the Councilman was not present when the special use permit was approved at a later meeting, the commission on ethics found that although Councilman McDonald's actions reflected poor judgment and violated city protocol and that he may have used his position as city councilman to get staff to perform work relating to the matter, his conduct did not constitute a violation of NRS 281.481(2) because the evidence did not show any benefit to Councilman McDonald, or that he had any pecuniary or business relationship with any person for whom he sought to secure or grant unwarranted privileges, preferences, exemptions or advantages. In re McDonald, CEO 00-41 (7-13-2001)

Out-of-protocol contacts with staff by elected officials alone do not constitute ethical violations. Where Mr. McDonald, a member of the Las Vegas City Council, approached staff in the city business license division through his liaison and made inquiries related to distance separations provisions of the city code and issues of possible code violations in a matter on which he disclosed a conflict of interest and abstained from voting, the commission on ethics found that out-of-protocol contacts with staff by elected representatives, in and of themselves, do not constitute ethical violations because such a conclusion would unduly restrict elected representatives in carrying out their official responsibilities. The commission stated that the observation or violation of protocol is a matter for the internal processes of the municipality and does not constitute an ethical violation unless other evidence of statutory breaches is

present. The commission found that there was no evidence that Councilman McDonald or his liaison: (1) attempted to influence the staff in the business license division to depart from the faithful performance of their duties or requested any special treatment from the staff; (2) was involved in the decision to locate a religious institute within the distance restrictions relating to the special use permit; or (3) attempted to have the city surveyors do anything other than conduct an accurate, professional survey in accordance with their city responsibilities. (See NRS 281.481.) In re McDonald, CEO 00-41 (7-13-2001)

Violation where city councilman impermissibly advocated matter benefiting his employer. Where: (1) the employer of Mr. McDonald, a member of the Las Vegas City Council, had an ownership interest in a facility which was in financial difficulties and which the City of Las Vegas was considering acquiring; and (2) Mr. McDonald disclosed his conflict and abstained regarding the matter of the acquisition of the facility but provided information relating to the facility to other members of the City Council and to the city manager, the commission on ethics opined that although there was no evidence that Mr. McDonald was promised additional compensation by his employer for assisting his employer in advocating for the acquisition of the facility, that Mr. McDonald's employment was explicitly dependent on such assistance or that Mr. McDonald acted with the intent to profit personally, Mr. McDonald violated NRS 281.481(2) because he used his position as a councilman to secure or grant an unwarranted privilege, preference or advantage for himself by attempting to benefit and please his employer and thereby curry favor for himself to protect his primary source of income. The commission stated that Mr. McDonald's loyalty to his employer motivated him to assist his employer by using his access to staff and other members of the City Council, which an ordinary member of the public would not have, to lobby them to take action on a matter which would benefit his employer, and therefore himself as an employee, and which did not appear to be a good economic deal for the city or in the public's interest. In re McDonald, CEO 00-41 (7-13-2001)

No sanctions imposed based on deadlocked vote. Where the commission on ethics found that Mr. McDonald, a member of the Las Vegas City Council, violated NRS 281.481(2) and 281.501 by impermissibly advocating a matter that benefited his employer, the commission deadlocked on its vote regarding whether the violations were willful. Although Councilman McDonald was charged with knowledge of the code of ethics, including the distinction between permissible participation and impermissible advocacy, and his conduct clearly crossed the line into impermissible advocacy, the commission stated that there was no evidence that he advocated the use of public money for his own personal purposes. Noting that its deadlocked vote did not result in a bright line test to guide public

officials regarding what conduct will be deemed to be willful violation of chapter 281 of NRS, the commission stated that: (1) whether conduct constitutes a willful violation resulting in the imposition of sanctions is an intensive, fact-specific inquiry and a public official whose conduct violates chapter 281 of NRS will always be exposed to uncertainty regarding whether such conduct will be found to be willful; (2) the simplistic lesson is for a public official to avoid conduct that violates chapter 281 of NRS and avail himself of the "safe harbor" protections of NRS 281.551(6) whenever any issue even remotely implicates that chapter; and (3) the code of ethics places the burden on public officers and employees to conform their conduct to the highest standards of public service, avoiding even the appearance of placing personal benefit above the public interest. In re McDonald, CEO 00-41 (7-13-2001)

Service by public agency member as legislative lobbyist for public agency and private business. Where a public officer-elect, who is elected to a public agency, wishes to serve simultaneously as a legislative lobbyist for that public agency and a local private business, the commission on ethics stated that NRS 281.481(1) would prohibit him from accepting such a lobbying engagement if a reasonable person could look at his intended actions and have no confidence that he would be adequately representing the public agency because of his fiduciary or pecuniary interest in satisfying his private-interest lobbying clients. Abstract, CEO 00-53 (1-24-2001)

Risk of violating provision by public agency member serving as legislative lobbyist for public agency and private business. Where a public officer-elect, who is elected to a public agency, wishes to serve simultaneously as a legislative lobbyist for that public agency and a local private business, the commission on ethics stated that the public officer-elect could be perceived to have used his position in government to secure an unwarranted privilege or preference for the private business in violation of NRS 281.481(2) if he, for example, learns about legislation that might affect the private business when meeting in his capacity as a public officer with a legislator on a matter involving the public agency. Abstract, CEO 00-53 (1-24-2001)

Risk of violating provision where private client pays expenses of public agency member for time spent lobbying legislature for private client and public agency. Where a public officer-elect, who is elected to a public agency, wishes to serve simultaneously as a legislative lobbyist for that public agency and a local private business, the commission on ethics stated that the public officer-elect could violate NRS 281.481(4) if, while he was at the legislature lobbying for the private business and the public agency, his expenses and salary for such lobbying were paid for by the private business and he waived his right to receive

reimbursement for his travel and per diem from the public agency for that lobbying. Abstract, CEO 00-53 (1-24-2001)

Public officer-elect who works as lobbyist is prohibited from using nonpublic information acquired through his public duties or lobbying to help private client or himself with other clients. Where a public officer-elect, who is elected to a public agency, wishes to serve simultaneously as a legislative lobbyist for that public agency and a local private business, the commission on ethics stated that NRS 281.481(5) would prohibit him from using any information which he acquires through his duties with the public agency and lobbying and which is not at that time available to the general public to help the private business or to help himself with other lobbying clients. Abstract, CEO 00-53 (1-24-2001)

Marketing of access to legislators by public officer-elect employed as lobbyist prohibited. Where a public officer-elect, who is elected to a public agency, wishes to serve simultaneously as a legislative lobbyist for that public agency and a local private business, the commission on ethics stated that NRS 281.481(10) would prohibit him from soliciting lobbying positions or contracts with other business entities by "marketing" his acquaintance with and access to legislators gained through his position as a public officer. Abstract, CEO 00-53 (1-24-2001)

No violation where county commissioner had no power to offer county job to or promote anyone. Where: (1) Commissioner Kenny, who is a member of the Clark County Board of Commissioners, held a meeting at her home to discuss allegations of improprieties concerning the county facilities division of the department of general services; and (2) it was alleged at the meeting that Commissioner Kenny asked several persons at the meeting, in exchange for the promise of a job and a promotion to those persons, to break into a governmental office to acquire documents damaging to the reelection campaign of the opponent of a candidate she supported, the commission on ethics opined that Commissioner Kenny did not violate NRS 281.481(1) because she did not have the power or authority to offer a county job to anyone or to promote any county employee. The commission found that the evidence demonstrated that Commissioner Kenny merely attempted at the meeting to gather information and evidence relating to the alleged improprieties, which was consistent with her responsibilities in carrying out the faithful and impartial discharge of her public duties as a county commissioner. Although noting in the fact-finding effort that Commissioner Kenny's language may have been salty and her comments caustic at times and that to some extent her eagerness to gather certain information may have been motivated by political goals, the commission stated that mere salty language, caustic comments and political motivation do not, by themselves, amount to a violation of NRS 281.481(1). In re Kenny, CEO 00-54 (9-20-2001)

Intent of provision is to prohibit quid pro quo and required two-pronged factual determination. The intent of NRS 281.481(1) is to prohibit a public officer or employee from violating the public trust by taking official action in exchange for a personal benefit, i.e. quid pro quo, thereby departing from the faithful and impartial discharge of public duties. The analysis of the commission on ethics pursuant to NRS 281.481(1) involved a two-pronged factual determination: (1) whether the public officer or employee sought or accepted a gift, service, favor, employment, engagement, emolument or economic opportunity; and (2) whether the gift, service, favor, employment, engagement, emolument or economic opportunity would tend improperly to influence a reasonable person in the position of the public officer or employee to depart from the faithful and impartial discharge of his public duties. In re Kenny, CEO 00-54 (9-20-2001)

Simultaneous public service as member of board of adjustment and private employment as engineering consultant does not violate statutory provision. Where a member of a city board of adjustment is a licensed civil engineer in his private capacity and the president of a consulting business that advises and represents clients before governmental agencies on land use and related matters, the commission on ethics found that such simultaneous public service and private employment does not, by itself, create the type of misconduct contemplated by NRS 281.481(2) and therefore does not violate that provision. Abstract, CEO 00-55 (3-6-2001)

Marketing of public position to potential clients of public officer's private business prohibited as use of public office for private gain. Where a member of a city board of adjustment is a licensed civil engineer in his private capacity and the president of a consulting business that advises and represents clients before governmental agencies on land use and related matters, the commission on ethics stated that during his term of office, the public officer must exercise caution in the manner in which he markets his private consulting business to potential clients. The commission noted that one manner in which a public officer may use his office for private gain is to use his public status as a tool or device to generate business for his private business by "marketing" his public position to clients who might benefit from that position through, for example, the listing of the public officer's present public office on marketing materials such as a curriculum vitae, resume or brochure. The commission stated that this restriction only applies during the public officer's term of office in a particular public position and not thereafter. (See NRS 281.481(10).) Abstract, CEO 00-55 (3-6-2001)

Conduct disadvantaging another can create appearance of impropriety. Where the testimony of a public officer who is a member of a regulatory board and was previously employed by a company that is subject to regulation by the regulatory board

indicated that the public officer may, to avoid appearances of impropriety, be tempted to be more demanding on the company with regard to issues before the board than on other regulated businesses with issues before the board, the commission on ethics stated that conduct disadvantaging another can create an appearance of impropriety much the same as conduct advantaging another. (See NRS 281.481(2).) Abstract, CEO 01-04 (6-4-2001)

Cautious use of information that is unavailable to general public and acquired in public capacity advised. Where a public officer who is a member of a regulatory board was previously employed by a company that is subject to regulation by the regulatory board, the commission on ethics advised the public officer to be extremely cautious in the use of information that he may acquire in his official, public capacity that may not be available to the general public so that such information is not communicated or used in violation of NRS 281.481(5). Abstract, CEO 01-04 (6-4-2001)

No evidence of use of former position as member and chairman of state board of agriculture to seek position of division administrator with state department of agriculture. Where Mr. Connelley, who is a former member and chairman of the state board of agriculture and a former cattle rancher, wishes to accept an unclassified position as the administrator of the division of livestock identification of the state department of agriculture, which is the department which administers the board's policy, the commission on ethics found that there was no evidence in the facts or circumstances of the matter or in testimony presented to the commission to suggest that Mr. Connelley used his former position with the board to seek employment with the state department of agriculture in violation of NRS 281.481(10). In re Connelley, CEO 01-05 (3-27-2001)

Violation of provision where chief of division of county department encouraged division employees to participate in political campaigns. Where Mr. Barrett, Chief of the Clark County Facilities Division, encouraged division employees to exercise their right to vote by volunteering on their own personal time on political campaigns, the commission on ethics found that Mr. Barrett sought or accepted services or favors from division employees that might tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his duties in violation of NRS 281.481(1). Although there was no evidence that the division employees who participated in such political activity participated on county time, received county compensation for their participation, were offered employment benefits in return for their participation or received, or were threatened by Mr. Barrett with, adverse employment consequences for refusal to participate in such activity, the commission found that because of the manner in which Mr. Barrett communicated and manifested his political enthusiasm and interest in particular political campaigns, a division

GENERAL PROVISIONS

281.481

employee could reasonably perceive that the potential existed for Mr. Barrett to make employment-related decisions based on whether or not the employee participated in the political activity that Mr. Barrett supported. The commission noted that no division employee that participated in such political activity appeared to support any political candidates other than those supported by Mr. Barrett and no such employee was able to articulate why he supported the candidate on whose campaign he volunteered. In re Barrett, CEO 01-08A (2-1-2002)

No violation of provision related to political activism of chief of division of county department. Where Mr. Barrett, Chief of the Clark County Facilities Division, encouraged division employees to exercise their right to vote by volunteering on their own personal time on political campaigns, the commission on ethics found that Mr. Barrett did not violate NRS 281.481(2) because there was no evidence of any conduct by Mr. Barrett related to his political activism by which he secured or granted any privilege, preference, exemption or advantage to himself or to any other person or entity. In re Barrett, CEO 01-08A (2-1-2002)

No evidence of use or knowledge of use of county property or equipment by chief of division of county department for participation of division employees in political activity. Where Mr. Barrett, Chief of the Clark County Facilities Division, encouraged division employees to exercise their right to vote by volunteering on their own personal time on political campaigns, the commission on ethics found no evidence that Mr. Barrett used any county property or equipment to benefit his personal or financial interest or had knowledge of or involvement in the use of county property or equipment by county employees for participation in political activity. (See NRS 281.481(7).) In re Barrett, CEO 01-08A (2-1-2002)

No evidence of personal or financial benefit to chief of division of county department who encouraged division employees to participate in political campaigns. Where Mr. Barrett, Chief of the Clark County Facilities Division, encouraged division employees to exercise their right to vote by volunteering on their own personal time on political campaigns, the commission on ethics found that Mr. Barrett did not violate NRS 281.481(9) because even though Mr. Barrett actively encouraged or influenced subordinate county employees to become involved in the political campaign process, there was no evidence that in so doing Mr. Barrett attempted to benefit himself personally and financially. In re Barrett, CEO 01-08A (2-1-2002)

Two-prong test to determine violation of provision. The commission on ethics applies the following two-prong test to determine whether a public officer has violated NRS 281.481(2): (1) whether a public officer's official conduct benefited some person or business entity; and (2)

whether the public officer intended such conduct to so benefit the person or business entity. In re Barrett, CEO 01-08A (2-1-2002), cited, In re Hawkes, CEO 01-08B (2-12-2002)

No unwarranted privilege where outside employment of county employees was authorized by written policy, available to all willing employees and established practice in particular division. Where Mr. Hawkes, the former Director of the Department of General Services of Clark County, regularly employed county employees, who were typically in the Department's Facilities Division, to do outside employment or "side work" for him but paid such employees somewhat less than industry rates for the work because the employees were not licensed or insured contractors, the commission on ethics found that Mr. Hawkes did not secure for himself an unwarranted privilege in violation of NRS 281.481(2) because the "side work": (1) was authorized by a written county policy; (2) was available to all employees willing to do such work; and (3) was an established practice within the Facilities Division. In re Hawkes, CEO 01-08B (2-12-2002)

No violation where public employee had no knowledge of use of county property for his benefit. Where: (1) Mr. Hawkes, the former Director of the Department of General Services of Clark County, regularly employed county employees to do outside employment or "side work" for him; and (2) on one particular job the county employee installed an air compressor at Mr. Hawkes' residence that the employee, without Mr. Hawkes' knowledge, had purchased on a county purchase order, the commission on ethics found no evidence that Mr. Hawkes used any county property or equipment himself or that he had knowledge of the use of any county property or equipment by anyone else for his benefit. (See NRS 281.481(7).) In re Hawkes, CEO 01-08B (2-12-2002)

No violation of provision for employing county employees to do "side work" pursuant to county policy. Where Mr. Hawkes regularly employed county employees to do outside employment or "side work" for him on their own time, the commission on ethics opined that Mr. Hawkes did not attempt to influence subordinate employees to benefit his personal interest in violation of NRS 281.481(9) because: (1) Clark County had a written policy that allowed employees, with county approval, to work outside jobs on their own time using their own materials; (2) county employees volunteered for such "side work" and were not forced by anyone to do such work; and (3) Mr. Hawkes paid the county employees for their work. In re Hawkes, CEO 01-08B (2-12-2002)

Improper for assemblyman to use legislative letterhead for fundraising letter related to restricting expenses. Where Assemblyman Hettrick who serves as the assembly minority leader sought advice regarding a letter that he proposed to send on his assembly letterhead to registered Nevada Republicans seeking contribu-

tions to fund the expense that the Republican Party would incur to engage legal and political consultants in the redistricting process, the commission on ethics opined that it would be improper for Assemblyman Hettrick to use his Nevada assembly letterhead for the letter because: (1) the letter was essentially a political fundraising letter and, as a state assemblyman, Assemblyman Hettrick has more power and carries more weight in sending a fundraising letter than would an average citizen sending the same letter; and (2) there is a risk therefore of creating an appearance of impropriety or that the state assembly or legislature endorses the content of the letter. The commission stated that the letter may be sent if it was printed on Nevada Republican Party letterhead and may be signed by the assembly minority leader and the senate majority leader. (See NRS 281.481.) In re Hettrick, CEO 01-10 (6-4-2001)

Statute prohibits use of any governmental time, property, equipment or facility or assistance of legislative employees for fundraising activities related to redistricting expenses. Where Assemblyman Hettrick, who serves as the assembly minority leader, sought advice regarding a letter that he proposed to send on his assembly letterhead to registered Nevada Republicans seeking contributions to fund the expense that the Republican Party would incur to engage legal and political consultants in the redistricting process, the commission on ethics opined that it would be improper for Assemblyman Hettrick to perform activities related to the proposed fundraising endeavor using any governmental time, property, equipment or other facility or to require or authorize the assistance of any legislative employee, while on duty, in performing activities related to the proposed fundraising endeavor. (See NRS 281.481(8).) In re Hettrick, CEO 01-10 (6-4-2001)

No violation where business relationship developed from friendship and not public position. With regard to a real estate investment that Mr. Montandon, who is the mayor of the City of North Las Vegas, entered into with Mr. Lampman, a real estate broker, the commission on ethics found that there was no evidence that Mayor Montandon used his position as mayor to secure for himself the real estate investment opportunity with Mr. Lampman in violation of NRS 281.481(2) because: (1) their business relationship had arisen from the friendship they developed through their common interest in motorcycle riding; and (2) when Mayor Montandon was unable to meet his promissory note obligation to Mr. Lampman with respect to the investment, Mayor Montandon acknowledged his default at once and surrendered to Mr. Lampman all interest that he had in the investment. In re Montandon, CEO 01-11 (12-14-01)

Potential for conflicts and appearance of impropriety where functions performed by public officer in outside employment are identical to functions performed by public officer in public office. Where a public officer who was elected as the public administrator/public guardian

for the county had previously operated a private fiduciary business in which he served as a guardian of estates, guardian of persons, executor or personal representative of estates and trustee of trusts and although he has not solicited new business, he continues to administer in a private capacity matters for which he had acquired personal fiduciary responsibility before his election, the commission stated that although public officers are generally not prohibited from engaging in outside employment or pursuing other interests in a personal capacity unless specifically restricted by statute, the functions that the public officer proposed to perform in a personal capacity and for which he would receive a pecuniary benefit were essentially identical to the functions that he performs as a public officer and was concerned about the potential for conflicts between his public duty and personal interests and the appearance to the public of impropriety. (See NRS 281.481.) Abstract, CEO 01-14 (6-29-2001)

Public administrator/public guardian prohibited from undertaking certain duties with respect to matters arising from private fiduciary business that officer operated before his election. Where a public officer who was elected as the public administrator/public guardian for the county had previously operated a private fiduciary business in which he served as a guardian of estates, guardian of persons, executor or personal representative of estates and trustee of trusts and although he has not solicited new business, he continues to administer in a private capacity matters for which he had acquired personal fiduciary responsibility before his election, the commission on ethics opined that the public officer would violate NRS ch. 281 if: (1) he undertook the duties of trustee in his personal capacity in cases in which he was nominated as successor trustee of a trust in his individual or personal capacity by the settlor or a prior trustee of the trust before he was elected public administrator/public guardian and the trust became ready for administration after he assumed that office; and (2) he undertook the duties of guardian of persons or property, or both, in cases in which he was nominated in his individual or personal capacity by the family of a proposed ward after he was elected to and assumed the office of public administrator/public guardian. (See NRS 281.481.) Abstract, CEO 01-14 (6-29-2001)

Circumstances in which public administrator/public guardian would not violate chapter with respect to matters relating to private fiduciary business that officer operated before his election. Where a public officer who was elected as the public administrator/public guardian for the county had previously operated a private fiduciary business in which he served as a guardian of estates, guardian of persons, executor or personal representative of estates and trustee of trusts and although he has not solicited new business, he continues to administer in a private capacity matters for which he had acquired personal fiduciary responsibility before his election, the commission

on ethics opined that the public officer would not violate NRS ch. 281 if he: (1) completed the fiduciary obligations for which he assumed responsibility in a personal capacity as trustee, personal representative or guardian before he was elected to and assumed the office of public administrator/public guardian; and (2) undertook fiduciary duties as executor or personal representative in a personal capacity in those cases in which he was nominated in a will in his individual or personal capacity before he was elected to and assumed the office of public administrator/public guardian and the person died after the public officer was elected to and assumed that office. (See NRS 281.481.) Abstract, CEO 01-14 (6-29-2001)

No evidence that public officer used his public office in violation of provision. Where Mr. Glenn, who is the chairman and an elected member of the Humboldt General Hospital Board of Trustees, is a member of a partnership which owns two professional office buildings located near a professional office building owned by the General Hospital and which leases space in one of its buildings to the General Hospital, the commission on ethics found that Mr. Glenn did not violate NRS 281.481(2) by voting to increase the rent charged for professional office space in the building owned by the General Hospital because: (1) there was no evidence that by voting on the matter Mr. Glenn used his position as chairman and as a member of the Board to secure an unwarranted privilege, preference, exemption or advantage for himself or any other person or business entity; and (2) the Board's action to increase the rent was a prudent financial decision based upon an analysis by the Board of fair market rental rates. In re Glenn, CEO 01-15 (2-1-2002)

Provision would prohibit public officer of local government with equity membership in company that provides services for program for certain employees of local government from using his public position to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, the company and other members of company. Where an elected public officer of a local government wishes to participate as a fifty percent equity member in a limited-liability company that would provide services to manage a program for temporary, part-time and seasonal employees of the local government, the commission on ethics opined that NRS 281.481(2) would prohibit the public officer from using his position as a public officer to secure or grant to himself, the company or other members of the company any privilege, preference, exemption or advantage related to the business of the company for which there is no justification or adequate reason. Abstract, CEO 01-16 (6-13-2001)

Public officer of local government risks violating provision if he participates in negotiation or execution of contract between the local government and a company in which he holds fifty percent membership interest to provide services for a program for certain employees of

local government. Where an elected public officer of a local government wishes to participate as a fifty percent equity member in a limited-liability company that would provide services to manage a program for temporary, part-time and seasonal employees of the local government, the commission on ethics opined that the public officer would risk violating NRS 281.481(3) if he participated in his official capacity on behalf of the local government in the negotiation or execution of a contract between the local government and the company because his fifty percent interest in the company would arguably be a "significant pecuniary interest." Abstract, CEO 01-16 (6-13-2001)

Public officer prohibited from acquiring and using information unavailable to general public to further pecuniary interest of company in which he has membership interest. Where an elected public officer of a local government wishes to participate as a fifty percent equity member in a limited-liability company that would provide services to manage a program for temporary, part-time and seasonal employees of the local government, the commission on ethics opined that the public officer would violate NRS 281.481(5) if he acquired information that was not available at the time to the general public and use that information or convey it to another person so as to advantage the business of the company because he has a pecuniary interest in the company. Even if the public officer did not affirmatively use information that was not available at the time to the general public to the advantage of the company, the commission stated that the fact that he may, in his position as a public officer, have access to such information provides the opportunity for such information to be used to the company's advantage and thereby raises the question of appearance of impropriety and a public officer's duty to hold office for the sole benefit of the people. Abstract, CEO 01-16 (6-13-2001)

Public officer is prohibited from taking any action to suppress governmental report or document that might tend to affect unfavorably a company in which he has a pecuniary interest. Where an elected public officer of a local government wishes to participate as a fifty percent equity member in a limited-liability company that would provide services to manage a program for temporary, part-time and seasonal employees of the local government, the commission on ethics opined that the public officer would violate NRS 281.481(6) if, in his capacity as a public officer, he took any action to suppress a governmental report or other document that might tend to affect unfavorably the company because he has a pecuniary interest in the company. Abstract, CEO 01-16 (6-13-2001)

Member of professional regulatory board may file complaint with board against former associate. Where: (1) a public officer who is a licensed professional and a member of the regulatory board for that profession filed a complaint with that board against his former associate, who is in the same profession as the public officer and

against whom the public officer was currently involved in litigation that had been initiated before the public officer's appointment to the board; and (2) after his appointment to the board and during the course of examining the business and practice activities of his former associate, the public officer became aware of what he believed to be violations of the laws governing the profession by his former associate, the commission on ethics opined that the public officer did not violate any provision of chapter 281 of NRS by filing the regulatory complaint against his former associate. (See NRS 281.481.) Abstract, CEO 01-19 (8-7-2001)

Dual capacities as member of Board of Regents and employee of university program presents risk of appearance of impropriety and potential for abuse of power. Where Ms. Howard, who is a member of the Board of Regents of the University and Community College System of Nevada and an undergraduate student at the University of Nevada, Las Vegas (UNLV), wished to accept a public service intern position with a federally funded nonacademic program that is associated with UNLV and is available to undergraduate students of UNLV, the commission on ethics found nothing in the facts and circumstances that would specifically place Ms. Howard in violation of NRS 281.481 if she was selected to fill the intern position. However, the commission cautioned Ms. Howard that her potential dual capacities as a member of the Board of Regents, which oversees the administration of UNLV and issues relating to UNLV, and an employee of a UNLV program present a very real risk of the appearance of impropriety and the potential for abuse of the power she possesses as a member of the Board of Regents. (See NRS 281.481.) In re Howard, CEO 01-36 (2-1-2002)

Violation where county treasurer allowed her private interests to influence her decision and conduct as county treasurer. Where Ms. Shangle, who is the county clerk of Eureka County and ex officio county treasurer of Eureka County in which capacity she is the ex officio tax receiver for all taxes assessed on the Eureka County tax roll: (1) was conveyed interest in a certain parcel of real property on which taxes were owed; (2) wrote checks payable to Eureka County for payment of the property tax on the parcel but never negotiated the checks on behalf of Eureka County or recorded them on the tax roll; (3) "whited out" a reference to the parcel on a list of delinquent properties to be auctioned and omitted the parcel from the published notice of sale of those delinquent properties; and (4) upon inquiry by the county commission, represented that she and her husband had redeemed the parcel by paying the taxes due thereon, the commission on ethics opined that Ms. Shangle violated NRS 281.481(1) because she allowed her private interests in the parcel to influence her decision and conduct as county treasurer and ex officio tax collector and caused her to

depart from the faithful and impartial discharge of her public duty. In re Shangle, CEO 01-40 (5-17-2002)

County treasurer afforded herself unwarranted privileges, preferences and opportunities in matters over which she had control by virtue of her elected position. Where Ms. Shangle, who is the county clerk of Eureka County and ex officio county treasurer of Eureka County in which capacity she is the ex officio tax receiver for all taxes assessed on the Eureka County tax roll: (1) was conveyed interest in a certain parcel of real property; (2) wrote checks payable to Eureka County for payment of the property tax on the parcel but never negotiated the checks on behalf of Eureka County or recorded them on the tax roll; (3) "whited out" a reference to the parcel on a list of delinquent properties to be auctioned and omitted the parcel from the published notice of sale of those delinquent properties; and (4) upon inquiry by the county commission, represented that she and her husband had redeemed the parcel by paying the taxes due thereon, the commission on ethics found that Ms. Shangle violated NRS 281.481(2) by affording herself in matters over which she alone had control by virtue of her elected position unjustified and unreasonable privileges, preferences and opportunities with regard to property in which she claimed a private ownership interest that were not available to any other property taxpayer in Eureka County. In re Shangle, CEO 01-40 (5-17-2002)

Violation where county treasurer omitted information relating to real property that she owned on governmental documents because her pecuniary interests might be affected. Where Ms. Shangle, who is the county clerk of Eureka County and ex officio county treasurer of Eureka County in which capacity she is the ex officio tax receiver for all taxes assessed on the Eureka County tax roll: (1) was conveyed interest in a certain parcel of real property; (2) wrote checks payable to Eureka County for payment of the property tax on the parcel but never negotiated the checks on behalf of Eureka County or recorded them on the tax roll; (3) "whited out" a reference to the parcel on a list of delinquent properties to be auctioned and omitted the parcel from the published notice of sale of those delinquent properties; and (4) upon inquiry by the county commission, represented that she and her husband had redeemed the parcel by paying the taxes due thereon, the commission on ethics found that Ms. Shangle violated NRS 281.481(6) because by omitting the reference to the parcel on the list of delinquent properties to be auctioned and on the published notice of sale of those properties, she was suppressing information in a governmental document that might tend to affect unfavorably her pecuniary interests. In re Shangle, CEO 01-40 (5-17-2002)

Simultaneous service as board member and employee of department that board oversees could create perception of misuse of public position. Where: (1) a public officer who is a

GENERAL PROVISIONS

281.491

member of a state board wishes to apply for a position in a state department for which she holds a valid license and meets the qualifications; and (2) that state board appoints, evaluates and has the power to remove the administrator of the department in which the public officer seeks the position, approves all personnel positions for that department, proposes that department's annual budget and has the power to revoke relevant licenses, the commission on ethics opined that by serving as both a member of the board and an employee of the department, the public officer could be perceived as using her position on the board to affect her interests in the position with the department in violation of NRS 281.481(2) because, as a member of the board, she would be the boss of the boss (i.e., the administrator of the department) of the boss (i.e., a deputy administrator of the department) of her boss (i.e., a director of the department). Abstract, CEO 02-01 (3-21-2002)

De minimus use of official vehicle for personal business did not violate statute. Where Mr. Harris, Sheriff of Elko County, used his official

sheriff's department vehicle to drop off pest control reports for his pest control business during normal business hours, the Commission on Ethics found that Mr. Harris's de minimus use of his official vehicle did not violate NRS 281.481(7) because: (1) Sheriff Harris, who was responsible for and had authority to authorize the personal use of department vehicles, had established a policy allowing limited personal use of those vehicles; (2) there was no evidence that his use of his official vehicle to drop off the reports interfered with the performance of his public duties; (3) the cost, if any, associated with the use of his official vehicle in this manner was negligible; and (4) there was no evidence that Sheriff Harris' conduct in occasionally dropping off the pest reports during normal business hours using his official vehicle would cause a reasonable person to perceive that Sheriff Harris's ability to carry out his official responsibilities with integrity, impartiality and competence was in any way impaired so as to create an appearance of impropriety. In re Harris, CEO 02-08 (8-15-2002)

NRS 281.491 Additional standards: Representation and counseling of private person before public agency; disclosure required. In addition to the requirements of the code of ethical standards:

1. A member of the executive branch or public employee of the executive branch shall not accept compensation from any private person to represent or counsel him on any issue pending before the agency in which that officer or employee serves, if the agency makes decisions. Any such officer or employee who leaves the service of the agency shall not, for 1 year after leaving the service of the agency, represent or counsel for compensation a private person upon any issue which was under consideration by the agency during his service. As used in this subsection, "issue" includes a case, proceeding, application, contract or determination, but does not include the proposal or consideration of legislative measures or administrative regulations.

2. A member of the legislative branch, or a member of the executive branch or public employee whose public service requires less than half of his time, may represent or counsel a private person before an agency in which he does not serve. Any other member of the executive branch or public employee shall not represent a client for compensation before any state agency of the executive or legislative branch of government.

3. Not later than January 10 of each year, any legislator or other public officer who has, within the preceding year, represented or counseled a private person for compensation before a state agency of the executive branch shall disclose for each such representation or counseling during the previous calendar year:

- (a) The name of the client;
- (b) The nature of the representation; and
- (c) The name of the state agency.

The disclosure must be made in writing and filed with the commission, on a form prescribed by the commission. The commission shall retain a disclosure filed pursuant to this subsection for 6 years after the date on which the disclosure was filed.

(Added to NRS by 1977, 1106; A 1991, 1597; 2001, 2289)

ATTORNEY GENERAL'S OPINIONS.

County engineer violates ethical standards if he represents private clients before county commission or regional planning commission. A county engineer violates ethical standards set forth in NRS 281.491 if he represents private clients before the county commission or the regional planning commission. AGO 89-14 (9-26-1989)

COMMISSION ON ETHICS OPINIONS.

Restrictions on simultaneous public service as member of board of adjustment and private employment as engineering consultant. Where a member of a city board of adjustment is a licensed civil engineer in his private capacity and the president of a consulting business that advises and represents clients before governmental agencies on land use and related matters, the commission on ethics opined that NRS 281.491 would prohibit the

public officer from accepting compensation for representing or counseling a private person on any issue pending before the board of adjustment or, for 1 year after leaving his position on the board, representing or counseling for compensation a private person on an issue that was under consideration by the board during the public officer's term of service. However, the commission stated that NRS 281.491 would not prohibit the public officer from appearing or representing clients before boards, commissions and agencies other than the board of adjustment on which he serves. When representing or counseling a private person before a state agency of the executive branch, the commission reminded the public officer to file a written disclosure with the commission for each such representation, as required by NRS 281.491. Abstract, CEO 00-55 (3-6-2001)

NRS 281.501 Additional standards: Voting by public officers; effect of abstention from voting on quorum; disclosures required of public officers and employees.

1. Except as otherwise provided in subsection 2 or 3, a public officer may vote upon a matter if the benefit or detriment accruing to him as a result of the decision either individually or in a representative capacity as a member of a general business, profession, occupation or group is not greater than that accruing to any other member of the general business, profession, occupation or group.

2. In addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

- (a) His acceptance of a gift or loan;
- (b) His pecuniary interest; or
- (c) His commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 3 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

3. A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

- (a) Regarding which he has accepted a gift or loan;
- (b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or

(c) In which he has a pecuniary interest, without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6, such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in

public to the chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner.

4. If a public officer declares to the body or committee in which the vote is to be taken that he will abstain from voting because of the requirements of this section, the necessary quorum to act upon and the number of votes necessary to act upon the matter, as fixed by any statute, ordinance or rule, is reduced as though the member abstaining were not a member of the body or committee.

5. If a public officer is voting on a matter which affects public employees, he shall make a full public disclosure of any personal pecuniary interest which he may have in the matter.

6. After a member of the legislature makes a disclosure pursuant to subsection 3, he may file with the director of the legislative counsel bureau a written statement of his disclosure. The written statement must designate the matter to which the disclosure applies. After a legislator files a written statement pursuant to this subsection, he is not required to disclose orally his interest when the matter is further considered by the legislature or any committee thereof. A written statement of disclosure is a public record and must be made available for inspection by the public during the regular office hours of the legislative counsel bureau.

7. The provisions of this section do not, under any circumstances:

(a) Prohibit a member of the legislative branch from requesting or introducing a legislative measure; or

(b) Require a member of the legislative branch to take any particular action before or while requesting or introducing a legislative measure.

8. As used in this section, "commitment in a private capacity to the interests of others" means a commitment to a person:

(a) Who is a member of his household;

(b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;

(c) Who employs him or a member of his household;

(d) With whom he has a substantial and continuing business relationship; or

(e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

(Added to NRS by 1977, 1106; A 1987, 2095; 1991, 1597; 1995, 1083; 1997, 3326; 1999, 2738)

ATTORNEY GENERAL'S OPINIONS.

When disclosure of interest and abstention from voting is required. Pursuant to NRS 281.501, as interpreted by the commission on ethics, a public officer is required to abstain from voting only if there exists objective evidence that a reasonable person in the public officer's situation would have his independence of judgment materially affected by a commitment in a private capacity to the tangible interests of others. Before a public officer may be required to abstain, there must be some evidence of a benefit or detriment which is greater than that experienced by similarly situated persons. Public officers should always disclose any relevant private interest on the record and, with the advice of counsel, explore whether such an interest

requires abstention. If it is determined that the independence of judgment of the public officer would not be materially affected and that a friend or acquaintance of the public officer has no tangible interest in the particular matter, the basis for those conclusions should be carefully articulated on the record. AGO 98-27 (9-25-1998)

Good faith reliance upon the advice of counsel as a complete defense. The good faith reliance of a public officer upon the advice of counsel is recognized by NRS 281.551 as a defense to the element of willfulness in ethics cases. This defense could be expanded to constitute a complete defense in appropriate cases. Public officers who sincerely attempt to comply with the law by consulting with counsel, who completely

281.501

GENERAL PROVISIONS

disclose relevant facts to their counsel, and who receive and follow advice consistent with the Nevada Ethics in Government Law (see NRS 281.411 et seq.), should not be found in violation, even if there is some subsequent disagreement regarding the advice given. (See also NRS 281.501.) AGO 98-27 (9-25-1998)

Campaign contributions generally do not trigger a possible conflict of interest. With regard to the ethical standards of public officers, a campaign contribution made to a public officer is treated differently than the pecuniary interest of the public officer. A campaign contribution is considered a constitutional right on the part of the contributor to participate in the electoral process, while a pecuniary interest is afforded no protection at all in the ethical realm of government. Pursuant to NRS 281.501, only a pecuniary interest which amounts to a conflict of interest will require disclosure and abstention. Had the legislature intended for campaign contributions to trigger a possible conflict of interest, the legislature could have included campaign contributions in NRS 281.501. Public policy strongly encourages the giving and receiving of campaign contributions. Adequate protection against corruption and bias is afforded through statutory disclosure requirements (see NRS 294A.120, 294A.125 and 294A.350). Once an elected official properly files his contribution and expenditure report, it becomes public information. Additional disclosure by the elected official is not therefore required. AGO 98-29 (11-5-1998)

Appropriateness of the secretary of state voting as a member of the state board of examiners to approve the funding for a contract awarded to a person from whom he had received campaign contributions. Where the secretary of state (see NRS ch. 225) received small campaign contributions in previous years from a person whose contract with the state is subject to approval by the state board of examiners (see NRS 353.010), and where the state board of examiners does not actually choose the recipient of the contract but only approves the funding for the contract, the secretary of state does not violate NRS 281.481 by having accepted those campaign contributions and thereafter voting to approve the funding on the contract awarded to the contributor. (See also NRS 281.501.) AGO 98-29 (11-5-1998)

Appropriateness of the secretary of state voting as a member of the state board of examiners to approve the funding for a contract awarded to his former employer with whom he maintains a retirement account. Where a bank which formerly employed the secretary of state (see NRS ch. 225), and at which the secretary of state has a retirement account, has a contract with the state that is pending approval by the state board of examiners (see NRS 353.010), the secretary of state does not need to disclose a possible conflict of interest and abstain from voting on the contract because: (1) since the board is not awarding the contract but only approving the funding for the

contract, and since the bank is entitled to the funding as it has already been awarded the contract, the bank would not be receiving any unwarranted privilege, preference or advantage pursuant to NRS 281.481 from the vote of the secretary of state; (2) the maintenance of a retirement account at the bank does not give the secretary of state a significant pecuniary interest in the bank pursuant to NRS 281.481 or 281.501; and (3) the vote of the secretary of state would not be affected by his commitment in a private capacity to the interest of the bank (see NRS 281.501) since the bank is not his current employer and his relationship with the bank is an arm's length business relationship. AGO 98-29 (11-5-1998)

Appropriateness of the secretary of state voting as a member of the state board of examiners to approve the funding for a contract awarded to his personal friend and accountant. Where the personal friend and accountant of the secretary of state (see NRS ch. 225) has a contract with the state that is pending approval by the state board of examiners (see NRS 353.010), the secretary of state does not need to disclose a possible conflict of interest and abstain from voting on the contract where the friendship and business association does not give the secretary of state a pecuniary interest and does not concern a commitment in a private capacity to the interests of others (see NRS 281.481 and 281.501) since the secretary of state: (1) does not receive discounted services from the accountant; (2) is billed in the same manner as other clients; and (3) has no ownership or financial interest in the business of the accountant. AGO 98-29 (11-5-1998)

COMMISSION ON ETHICS OPINIONS.

Guidance regarding line between impermissible advocacy and permissible participation. The line between a statement of fact and a statement of advocacy for the purposes of NRS 281.501(2) is razor thin. Statements that begin with "in my opinion," "I think," "I believe" or "I would hope" are signals that the statement might be more advocate than informative. The intent of the statement is guiding. A statement of advocacy is prohibited, even if factual, because the intent of advocacy is to get the hearer to believe the same as the speaker, and where the speaker has special influence and power because of her position, the hearer might be influenced to act not because of the merits of the speaker's argument but because of the speaker's position itself. On the other hand, a statement of fact, without any overtones of advocacy, is allowed because the intent of the speaker is merely to inform the hearer and so, theoretically, the person of the speaker should be irrelevant because information is information and facts are facts, regardless of who provides them. Because the consequences of crossing the line between permissible participation and impermissible advocacy will always rest upon the elected official proffering the statement, the best general rule is that an elected official who has already disclosed and abstained from a matter because of a disabling

GENERAL PROVISIONS

281.501

conflict of interest should always consider whether what she has to say really needs to be said and, if she thinks so, then she must be very careful with what she says and how she says it. Prudential forethought, common sense, and concern for appearances of impropriety will be the best prophylaxis. NRS 281.501(2) is not a strict prohibition, but a stiff caution. In other words, a member of the legislative branch may speak about a matter in which she is interested, but she had better know why, what and how before she does so. In re Kubichek, CEO 97-07 (6-11-1998), cited, In re McDonald, CEO 00-41 (7-13-2001)

Legally conflicted elected official may otherwise participate in a matter as a citizen applicant and provider of factual information. Where Ms. Kubichek, a member of the Humboldt County Board of County Commissioners, works for and operates a garbage hauling company and the county commission is considering and deciding issues related to the county's garbage collection service and the closure of rural landfills, the commission on ethics opined that although NRS 281.501 would require Ms. Kubichek to disclose her interest in the company and abstain from voting on such matters, the statute would allow Ms. Kubichek to otherwise participate in those matters as long as she only participated as a citizen applicant and a provider of factual information before the county commission. If Ms. Kubichek was an applicant for a permit before her county commission, she would be required by NRS 281.501 to disclose her interest and abstain from voting on or advocating for the passage of her permit as a county commissioner, but she could step out into the audience and testify regarding her permit as an applicant because nothing in NRS 281.501 or elsewhere in the Nevada Ethics in Government Law would compel the conclusion that once Ms. Kubichek became a county commissioner she became barred for the remainder of her term from participating in the ordinary processes of Humboldt County government as any citizen would, and such a conclusion would severely restrict the pool of potential candidates for any office. In re Kubichek, CEO 97-07 (6-11-1998), cited, In re McDonald, CEO 00-41 (7-13-2001)

Statute allows public official to participate regarding issues about which the public official possesses unique and valuable knowledge and experience. The commission on ethics stated that NRS 281.501(2) explicitly prohibits only two acts by a member of the legislative branch, voting and advocacy, and therefore, the legislative intent is that anything that is not a vote or advocacy is allowed a member of the legislative branch. Although a member of the legislative branch may be required to abstain from voting and advocating on a matter, the commission found that NRS 281.501(2) would allow the member to "otherwise participate" in the matter. In order to render that phrase meaningful, the commission on ethics opined that a public official could do something, e.g., provide facts as any other citizen, and that

neither NRS 281.501 nor any other portion of the Nevada Ethics in Government Law require that a public official lose her voice after her election regarding issues about which she might possess unique and valuable knowledge and experience. In re Kubichek, CEO 97-07 (6-11-1998), cited, In re McDonald, CEO 00-41 (7-13-2001)

No violation where mayor or his companies would not benefit any more than competitors from funding of certain public agency. Where Mr. Griffin, the Mayor of Reno, who owns several trade-related businesses that have out-of-state competitors, voted in favor of funding for the International Resource Center, which is a public agency that operates as a clearinghouse for information relating to international trade, the commission on ethics opined that the presumption in NRS 281.501 applied to Mr. Griffin and therefore he was not required to disclose and abstain from voting on the funding because the evidence showed that neither Mr. Griffin nor his companies would have benefited any more than any of his competitors if the funding to IRC were granted. In re Griffin, CEO 98-29 (4-29-2000)

Possible supervision of relative requires member of district board to resign from position as officer of district. Where a member of the board of a utility district who also serves as an officer of the district is responsible, when the president of the district is unavailable, for supervising the job performance and responsibilities of the member's relative who is an employee of the district, the commission on ethics found that the member did not violate NRS 281.501 because the member properly disclosed and abstained from voting on any matter directly or indirectly concerning her relative, including the work performance, responsibilities and compensation of her relative. However, although opining that the member may still serve as an elected member of the board, the commission stated that the member should resign from her position as an officer of the district to alleviate the appearance of impropriety or an actual ethics violation that may arise as a result of her possible supervision of her relative. Abstract, CEO 99-06 (1-24-2000)

Member of city council employed as sales representative of computer business required to disclose and abstain on matters concerning business and personal clients. Where a member of a city council is employed as a sales representative on a commission basis for a business that sells computer equipment and services to clients in the private sector, the commission on ethics stated that, pursuant to NRS 281.501, the member must disclose and abstain from voting on any matters which came before the city council regarding the computer business and her personal clients. Abstract, CEO 99-10 (1-24-2000)

Public employee must determine whether to disclose or abstain on votes involving company in which his family owns stock of parent company. Where a public employee of the State of

Nevada who is also a member of a state commission desires to serve in an uncompensated capacity on an advisory board to the board of directors of a private company and the public employee's spouse and children own stock of the parent company of the private company, the commission on ethics opined that, if a vote is pending before the state commission involving the private company or its parent company, the public employee must evaluate the facts of each such situation in light of NRS 281.501 to determine whether he must disclose or abstain from voting on the matter as a result of the stock ownership of the public employee's family in the parent company. Abstract, CEO 99-20 (11-30-1999)

Employee of state dairy commission required to disclose relationship with client of his part-time business that requests license from dairy commission. Where a public employee who is employed by the state dairy commission as an area supervisor desires to open and operate a small part-time business out of his home that would provide services to special fuel users inside and outside Nevada but would not provide such services to any person or business related to the dairy industry, the commission on ethics opined that if the public employee discovers that one of his business clients has requested a license from the dairy commission, the employee is required to disclose this business relationship to the dairy commission pursuant to NRS 281.501. In re French, CEO 99-22 (1-29-2000)

Disclosure and abstention from voting and discussion regarding contracts between a county and county commissioner. Where a member of a rural board of county commissioners who is the president and owner of a "widget" company bids on certain contracts offered by the county commission of which he is a member, the county regional transportation commission and other political subdivisions of the county, the commission on ethics stated that to comply with NRS 281.501, the commissioner must remove himself from the contracting process, disclose his business interest in the company when the matter comes before the county commission and abstain from voting and from all discussion regarding the contract process. Abstract, CEO 99-27 (5-8-2000)

A conflict of interest with respect to one portion of a bill requires that a legislator disclose, refrain from participating in and abstain from voting on anything relating to the entire bill. Where: (1) a member of the legislature who is also a partner in a law firm serves as the chairperson of a legislative committee during the legislative session; (2) an amendment proposed to a bill which had been referred to the legislator's committee and which the legislator had scheduled for a hearing created a conflict of interest for the legislator; (3) the legislator disclosed her conflict regarding the amendment in a work session but participated in the discussion and voted on portions of the bill that did not create a conflict for her; and (4) the legislator disclosed her conflict but

abstained from voting when a vote was taken on the entire bill in committee and subsequently on the senate floor, the commission on ethics opined that the legislator's actions with respect to the bill did not technically violate NRS 281.501. However, declaring its intention to give a broad and expansive reading to the terms "matter" and "participation" in NRS 281.501, the commission stated that a bill should be viewed in its entirety rather than in parts and that if a portion of a bill, including any proposed amendments, created a conflict, a government official must disclose the conflict and must refrain from participating in or voting on any matter having to do with the entire bill, including the scheduling of hearings and work sessions regarding the bill. Abstract, CEO 99-31 (2-5-2000)

Official reprimand as result of failure to comply with previous ethics opinion. Where (1) Mr. Griffin, the Mayor of Reno, participated in the discussion of an item on the agenda of the Reno City Council requesting the Airport Authority to televise its meetings; (2) by participating in the discussion he was violating CEO 97-48 (5-29-1998), which required him pursuant to NRS 281.501 to make a full disclosure with respect to the extent of one of his company's contract with the Airport Authority whenever the Reno City Council considered a matter pertaining to the Airport Authority; and (3) Mr. Griffin apologized to the City Council for inappropriately engaging in the discussion of the agenda item and recused himself from further participation, the commission on ethics officially reprimanded Mr. Griffin for failing to comply with CEO 97-48, reiterated to Mr. Griffin the strong public interest in knowing the effects which one's private interests may have on public decisions, which requires full and complete disclosures by public officers, and directed Mr. Griffin to fully comply with the disclosure requirements of CEO 97-48 and those required by law. The commission noted that the disclosure requirements are affirmative responsibilities of Mr. Griffin and any subsequent violations by him may be treated as successive violations by the commission and punished as permitted by law. In re Griffin, CEO 99-41 (5-19-2000)

Requirements for disclosure and abstention by a county commissioner on matters in which the law firm that employed the commissioner's son appeared. In a previous opinion (see CEO 98-54 (5-7-1999)), the commission on ethics required a county commissioner whose son worked as an associate for a law firm that appeared frequently before the county commission to disclose his relationship with his son, his son's relationship with the law firm and to abstain from participating in and voting on all matters before the county commission involving applicants represented by the son's law firm. As a result of amendments to NRS 281.501 in 1999, the practical effect of which was to require more disclosure about the effects of a public officer's private commitments on the decision-making process and fewer instances of mandatory abstention, the commission on ethics

revised the previous opinion and held that to comply with NRS 281.501: (1) whenever the law firm (or any law firm that employed the commissioner's son subsequently) appeared in a representative capacity before the county commission, the county commissioner must disclose sufficient information concerning his commitment to his son to inform the public of the potential effect of his action as required pursuant to NRS 281.501 because the county commissioner's actions would reasonably be affected by his relationship with his son; and (2) the decision of the county commissioner whether to abstain on a particular matter involved a case-by-case evaluation of relevant factors to determine whether the independence of judgment of a reasonable person in his situation would be materially affected by his commitment to his son. In re Woodbury, CEO 99-56 (12-22-1999), cited, Abstract, CEO 99-57 (5-19-2000), Abstract, CEO 99-60 (2-25-2000), In re McDonald, CEO 99-61 9-18-2000), Abstract, CEO 99-63 (2-25-2000), Abstract, CEO 00-01 (3-20-2000), Abstract, CEO 00-10 (6-30-2000), Abstract, CEO 00-25 (10-6-2000), In re Ferraro, CEO 00-26 (12-12-2000), Abstract, CEO 00-53 (1-24-2001), Abstract, CEO 00-55 (3-6-2001), In re Boggs-McDonald, CEO 01-12 (8-8-2001), In re Glenn, CEO 01-15 (2-1-2002), In re Griffin, CEO 01-27, 01-28 (2-25-2002), Abstract, CEO 02-04 (4-18-2002)

Factors for consideration by a county commissioner regarding matters in which the law firm that employed the commissioner's son appeared before the commission. In determining pursuant to NRS 281.501 whether the independence of judgment of a reasonable person in the situation of a county commissioner whose son works as an associate for a law firm that appeared frequently before the county commission would be materially affected by his commitment to his son, relevant factors that the county commissioner must consider on a case-by-case basis are: (1) his son's compensation arrangements with the law firm; (2) his son's responsibilities with the law firm, including client development; (3) his son's involvement with a particular matter before the county commission; (4) his son's involvement with the client of the law firm, regardless of whether or not the involvement is limited to the issue before the county commission; and (5) the compensation arrangement between the law firm and the client. In re Woodbury, CEO 99-56 (12-22-1999)

No balancing of hardships defense to unethical conduct. Chapter 281 of NRS does not allow a balancing of hardships defense to unethical conduct by public officers. A public officer may not violate his ethical duties to disclose or abstain pursuant to NRS 281.501 and then defend his conduct by asserting that obeying his duties would result in some hardship to a person to whom he has a commitment in a private capacity. As long as the public officer serves in an official capacity, he is obligated to act ethically. Family members and

other persons to whom he has a commitment in a private capacity must accept any resultant hardship. In re Woodbury, CEO 99-56 (12-22-1999)

Policy behind disclosure and abstention requirements. Although noting that abstention pursuant to NRS 281.501 in all cases would be a safe harbor for public officer and employees, the commission on ethics stated that: (1) abstention deprives the public, and specifically an elected official's constituents, of a voice in matters which come before public officers and employees; (2) public officers and employees should have an opportunity to perform the duties for which they were elected or appointed, except where private commitments would materially affect one's independence of judgment; (3) compliance with disclosure requirements informs the citizenry as to how its public officers and employees exercise their discretion and independent judgment; and (4) in exercising their discretion and independent judgment, public officers and employees are accountable to their constituents or their appointing authority and therefore, the burden is appropriately on the public officer or employee to disclose private commitments and the effect those private commitments can have on the decision-making process and to make a proper determination regarding abstention where a reasonable person's independence of judgment would be materially affected by those private commitments. In re Woodbury, CEO 99-56 (12-22-1999), cited, Abstract, CEO 99-60 (2-25-2000), Abstract, CEO 99-63 (2-25-2000), Abstract, CEO 00-01 (3-20-2000), In re Montandon, CEO 01-11 (12-14-2001), In re Boggs-McDonald, CEO 01-12 (8-8-2001), In re Glenn, CEO 01-15 (2-1-2002), In re Griffin, CEO 01-27, 01-28 (2-25-2002)

Requirements for disclosure and abstention by a public officer who is compensated for performing fundraising activities for a nonprofit corporation. Where a public officer simultaneously served as: (1) an elected city official for which he receives a salary and benefits; (2) a representative of the city on the board of a publicly funded corporation which was formed through a cooperative agreement among state and local governmental entities and the local chamber of commerce that makes decisions regarding local economic diversification issues; and (3) an independent contractor employed for a fixed monthly amount as a marketing director to perform fundraising activities by a privately funded nonprofit corporation formed to encourage economic development in the city, the commission on ethics opined that the public officer, in his capacity as an elected official, must comply with the standards for disclosure, participation and abstention set forth in NRS 281.501, and as construed by the commission in the Woodbury Opinion (CEO 99-56 (12-22-1999)) each time that a matter comes before him involving any business entity to which the public officer made a successful or unsuccessful solicitation on behalf of the private corporation. The commission stated that the public officer must

include in any such disclosures his employment contract or arrangement with the private corporation and all compensation that he receives pursuant to the contract or arrangement and a public declaration that anyone who feels that the public officer has misused his position relating to any such matters may bring the matter to the attention of the commission for further investigation. Abstract, CEO 99-57 (5-19-2000)

Requirements for disclosure and abstention by a board member regarding matters before the board involving organizations to which the member and his spouse belong. Where: (1) a public officer who is a member of a board of commissioners was appointed to that board by the governor based on the public officer's active involvement in activities in which the board is interested; (2) the public officer and his wife previously have been and are currently actively involved in efforts related to the board's responsibilities, including being members of and actively involved in organizations which have had and will likely continue to have matters before the board, including policy recommendations and requests for grant money; (3) the public officer holds a leadership position with one organization for which he does not receive any salary or compensation except reimbursement for travel expenses to one convention; and (4) other members of the board are also members of and actively participate in organizations related to the board's activities, the commission on ethics opined that when such an organization in which the public officer or his wife is a member comes before the board, the public officer must disclose, in accordance with NRS 281.501, as construed by the commission in the Woodbury Opinion (CEO 99-56 (12-22-1999)), his membership and, if any, the membership of his wife, in the organization and the potential effect which the decision he is making as a public officer will have on the organization and on him and, if applicable, his wife as a result of membership in the organization. After making such a disclosure, the public officer must determine on a case-by-case basis whether the independence of judgment of a reasonable person in his situation would be materially affected by his commitment, or that of his wife, to the organization affected by the decision being made and under the circumstances presented in the particular matter before the board. If so, the public officer must refrain from advocating the passage or failure of the matter and abstain from voting on the matter, depending on the particular issue before the board, the effect of the public officer's vote on the organization and the private interests of the public officer and, if appropriate, his wife related to the organization. Abstract, CEO 99-60 (2-25-2000)

Statute does not prohibit public officer from disclosing certain significant campaign contributions. Noting that the legislature amended NRS 281.501, effective October 1, 1999, to provide that the disclosure requirements of NRS 281.501 do not require a public officer to disclose

any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner, the commission on ethics stated that the statute clearly does not prohibit a public officer from disclosing any campaign contributions that may appear significant enough in relationship to the public officer's total campaign budget to raise the question of the effect of the contributions' on the independence of judgment of a reasonable person in the public officer's position. In such cases, the commission stated that the disclosure and abstention standards of NRS 281.501 may be implicated. In re McDonald, CEO 99-61 (9-18-2000), cited, In re Boggs-McDonald, CEO 01-12 (8-8-2001)

No violation of statute where public officer voted on contract extension with entity from which he had received campaign contributions. Where Mr. McDonald, a member of the Las Vegas City Council, received campaign contributions from Republic Services and some of its principals, officers, employees and subsidiaries, the commission on ethics opined that Councilman McDonald did not violate NRS 281.501 when he participated in the consideration of and voted on a 15-year advance extension of the city's disposal service contract with Republic Services' disposal service subsidiary. The commission found no evidence that: (1) Councilman McDonald accepted any gift or loan from Republic or any of its principals, officers, employees or subsidiaries; (2) Councilman McDonald had any pecuniary interest in Republic or its subsidiaries or predecessors; or (3) the campaign contributions that Councilman McDonald received from Republic and some of its principals, officers, employees and subsidiaries, in relationship to the total amount raised by the Councilman's political campaign and in consideration of all the facts and circumstances, would have had an improper effect on the independence of judgment of a reasonable person in Councilman McDonald's position when considering the contract extension. In re McDonald, CEO 99-61 (9-18-2000)

Employment of a brother of a commissioner by the parent company of a business regulated by a commission. Whenever matters come before a regulatory commission involving a regulated business and the parent company of the business employs the brother of a member of the commission, the commission on ethics opined that to comply with NRS 281.501, as construed by the commission in the Woodbury Opinion (CEO 99-56 (12-22-1999)), the commissioner must disclose: (1) the sibling relationship and that his brother works for the parent company of the business; and (2) the effect, if any, that the matter and his vote on the matter will have on his brother and on the commissioner's relationship with his brother. If the matter does not have such an effect, the commissioner is required to so state; if the matter does have such an effect, the commissioner is required to identify the effect and its extent. Finally, after disclosure, the commissioner must analyze on a

case-by-case basis whether the effect of the decision that he is making as a commissioner is so material that it would affect a reasonable person's independence of judgment and, based on his analysis, decide whether to vote or abstain on the matter. Abstract, CEO 99-63 (2-25-2000)

Standards for disclosure and abstention by public officer who works as part-time consultant for community organization. Where (1) a public officer who is a member of the Las Vegas City Council has a professional services contract with a community organization as a part-time consultant for which he receives a flat monthly fee; (2) pursuant to the contract he creates community outreach programs, which involve donations to the community organization by corporate sponsors which, in return, designate a charity for which the community organization serves as a promotional organization; (3) one such program involves a business entity that donated \$20,000 to the community organization and designated a foundation as the charity; (4) the business entity and other corporate sponsors of the community organization appear before the City Council on various matters; (5) the community organization appears before the City Council infrequently; and (6) the public officer does not receive any compensation from the business entity or foundation, the commission on ethics stated that pursuant to NRS 281.501, as construed by the commission in the Woodbury Opinion (CEO 99-56 (12-22-1999)), the public officer must, with respect to matters before the City Council involving the business entity and any companies doing business with the community organization, make a broad disclosure, analyze, on a case-by-case basis, whether the effect of the decision he is making as a public officer is so material that it would affect a reasonable person's independence of judgment and, based on his analysis, decide whether to vote or abstain on those matters. Abstract, CEO 00-01 (3-20-2000)

Private business partnership with colleague who is public officer allowed. Where a member of a city council who is the president and owner of a private company, which owns two local businesses, desires to form a private business partnership with another colleague who is a public officer, the commission on ethics opined that the mere formation of the private business partnership does not by itself constitute a violation of NRS 281.501. Although no facts relating to a specific matter were presented, the commission stated that the member of the city council and his public colleague must consider the requirements of NRS 281.501, as construed by the commission in the Woodbury Opinion (CEO 99-56 (12-22-1999)), on a case-by-case basis as matters come before them in their public capacities. Abstract, CEO 00-10 (6-30-2000)

No evidence of private or pecuniary interest that would require disclosure or abstention. Where: (1) Mr. Dressler, who is a member of the Douglas County Planning Commission, owns a 7 percent partnership interest in a company that

owns and leases out a small gravel pit; (2) Mr. Dressler receives income from the lease of that gravel pit; and (3) the special use permit for that gravel pit did not allow rock crushing operations, concrete batch plants and asphalt plants, the commission on ethics found that Mr. Dressler did not violate NRS 281.501 by not making any disclosure and voting on an application before the Planning Commission by a company for a major modification of its special use permit for its gravel pit, which allowed rock crushing operations, concrete batch plants and asphalt plants. The commission stated that there was no evidence that Mr. Dressler had a private or pecuniary interest that would have required disclosure or abstention pursuant to NRS 281.501 and any suggestion to the contrary was too remote. In re Dressler, CEO 00-12 (10-6-2000)

Failure of public officer to disclose sufficient information regarding his conflict of interest violated statute and previous commission opinion. Where: (1) in a previous opinion, CEO 98-70, the commission on ethics required Mr. Cook, who is a member of the state board of education ("board"), the entity which adopts the budget for and establishes policies in certain areas for the department of education, to disclose and abstain from voting on matters before the board that pertained to the superintendent, her performance evaluations and budgetary issues involving the departmental program of his fiancée, who is a classified employee of the department; (2) the legislature mandated the board to adopt standards of conduct and performance established by the Council to Establish Academic Standards in Public Schools; (3) Mr. Cook's fiancée facilitated one of the Standard Council's teams that wrote some of the standards that the board was mandated to adopt; and (4) Mr. Cook voted on two occasions to adopt the standards, disclosing after each vote some information regarding his conflict of interest with respect to his fiancée but stating that he felt compelled to vote because of the legislative mandate to the board to approve the standards, the commission on ethics found that Mr. Cook violated NRS 281.501 and its previous opinion because he failed to disclose sufficient information about his fiancée's participation as a facilitator for one of the teams that wrote some of the standards and his relationship with her so as to inform the public of the potential effect, if any, of his action on her. The commission stated that its previous opinion would not have required Mr. Cook to abstain from voting on the adoption of the standards because the matter did not pertain to the superintendent, her performance evaluations and budgetary issues involving the program of his fiancée. In re Cook, CEO 00-19 (8-11-2000)

Employment of member of board of county commissioners by not-for-profit organization. Where: (1) a member of the board of county commissioners is employed by a not-for-profit organization as the director of its projects in Nevada; and (2) a ballot question for the general election has been proposed to levy a sales tax to initiate a local

program which would compete directly with the county commissioner's employer, the commission on ethics opined that, with respect to matters that come before the board of county commissioners concerning the ballot question, the public officer must disclose sufficient information concerning his relationship as an employee of the not-for-profit organization and the effects of the ballot question and commensurate plan on his employer to inform the public of the potential effect of his action as required by NRS 281.501. After making such a disclosure, the commission stated that the public officer must determine whether the independence of judgment of a reasonable person in his situation would be materially affected by his commitment to his employer under the circumstances presented in particular matters and, if so, must refrain from advocating the passage or failure of the matter and abstain from voting on the matter pursuant to NRS 281.501. Abstract, CEO 00-25 (10-6-2000)

Mayor of Boulder City was required to disclose retirement benefit to him but not required to disclose his pecuniary interest in salary increase. Where Mr. Ferraro, who is the mayor of Boulder City, introduced and voted on an ordinance which increased the salaries of the mayor and members of the city council and which had the effect of increasing Mayor Ferraro's retirement benefits by \$300 per month if he retired at the end of his current term, the commission on ethics found that Mayor Ferraro did not violate NRS 281.501 by not disclosing his pecuniary interest in the proposed salary increase when introducing and voting on the ordinance because the pecuniary interest of a salary increase is obvious and the public record adequately provided notice to the public about Mayor Ferraro's salary increase. However, the commission opined that Mayor Ferraro violated NRS 281.501 by failing to disclose the potential retirement benefit to him as a result of the proposed increase in his salary at the time the matter was being considered by him. In re Ferraro, CEO 00-26 (12-12-2000)

Violation where city councilman impermissibly advocated matter in which he had a pecuniary interest and a commitment in a private capacity to his employer. Where: (1) the employer of Mr. McDonald, a member of the Las Vegas City Council, had an ownership interest in a facility which was in financial difficulties and which the City of Las Vegas was considering acquiring; and (2) Mr. McDonald disclosed his conflict and abstained regarding the matter of the acquisition of the facility but provided information relating to the facility to other members of the City Council and to the city manager, the commission on ethics opined that Mr. McDonald violated NRS 281.501 because his role went beyond a mere provider of facts and crossed the line into statements of advocacy relating to a matter in which he had a pecuniary interest and a commitment in a private capacity to his employer. In re McDonald, CEO 00-41 (7-13-2001)

Mere recital of possible public benefit arising from impermissible advocacy will not insulate public officer from violation. The mere recital of a possible public benefit which could arise from impermissible advocacy will not insulate a public officer from a violation of NRS 281.501. The prohibition against advocacy in NRS 281.501 is absolute and must be respected under all circumstances, even where a public officer believes in good faith that the public interest will be served by actions which also happen to convey a personal benefit on that officer. In re McDonald, CEO 00-41 (7-13-2001)

No sanctions imposed based on deadlocked vote. Where the commission on ethics found that Mr. McDonald, a member of the Las Vegas City Council, violated NRS 281.481(2) and 281.501 by impermissibly advocating a matter that benefited his employer, the commission deadlocked on its vote regarding whether the violations were willful. Although Councilman McDonald was charged with knowledge of the code of ethics, including the distinction between permissible participation and impermissible advocacy, and his conduct clearly crossed the line into impermissible advocacy, the commission stated that there was no evidence that he advocated the use of public money for his own personal purposes. Noting that its deadlocked vote did not result in a bright line test to guide public officials regarding what conduct will be deemed to be willful violation of chapter 281 of NRS, the commission stated that: (1) whether conduct constitutes a willful violation resulting in the imposition of sanctions is an intensive, fact-specific inquiry and a public official whose conduct violates chapter 281 of NRS will always be exposed to uncertainty regarding whether such conduct will be found to be willful; (2) the simplistic lesson is for a public official to avoid conduct that violates chapter 281 of NRS and avail himself of the "safe harbor" protections of NRS 281.551(6) whenever any issue even remotely implicates that chapter; and (3) the code of ethics places the burden on public officers and employees to conform their conduct to the highest standards of public service, avoiding even the appearance of placing personal benefit above the public interest. In re McDonald, CEO 00-41 (7-13-2001)

No violation where substantial and continuing business relationship had terminated. Where: (1) Mr. Montandon, who is the mayor of the City of North Las Vegas, had formed a limited partnership with Mr. Lampman, a real estate broker, to invest in real property; (2) Mayor Montandon's interest in the partnership terminated in September 1999; and (3) Mayor Montandon considered and acted upon zoning matters before the North Las Vegas City Council in September 2000 and February 2001 concerning a casino project in which Mr. Lampman had a financial interest, the commission on ethics found that Mayor Montandon did not violate NRS 281.501 in voting on the zoning matters because, after the termination of Mayor Montandon's legal interest in the limited

partnership, he did not have any substantial and continuing business relationship with, and therefore any commitment in a private capacity to, Mr. Lampman. In re Montandon, CEO 01-11 (12-14-01)

Public officer not required to abstain from voting on matters concerning donor of campaign contribution where no evidence of quid pro quo or improper influence. Although, unlike with respect to disclosure, NRS 281.501 does not contain a safe harbor provision for abstention with regard to campaign contributions, the commission on ethics opined that Councilwoman Boggs-McDonald did not violate NRS 281.501 or the public trust by not abstaining from and by participating in and voting on matters before the Las Vegas City Council concerning an entity which had made an in-kind campaign contribution to her that she properly reported pursuant to NRS 294A.120 because: (1) there was no evidence that ties the in-kind contribution that the councilwoman received from Station Casinos to any action taken by the Las Vegas City Council on matters concerning Station Casinos; and (2) there was no allegation that the in-kind contribution that the councilwoman received from Station Casinos would tend to improperly influence the independence of judgment of a reasonable person in the councilwoman's position on matters coming before her concerning Station Casinos. In re Boggs-McDonald, CEO 01-12 (8-8-2001)

Member of city council not required to disclose properly and timely reported campaign contributions under safe harbor provision in statute. Where: (1) Councilwoman Boggs-McDonald, who is a member of the Las Vegas City Council, accepted a trip from Station Casinos; and (2) the secretary of state found that she properly reported the trip as an in-kind campaign contribution pursuant to NRS 294A.120, the commission on ethics opined that based on the safe harbor provision for disclosures of campaign contributions in NRS 281.501, the councilwoman had no obligation to disclose the in-kind campaign contribution that she received from Station Casinos when she acted on matters before the city council concerning Station Casinos. In re Boggs-McDonald, CEO 01-12 (8-8-2001)

Failure to disclose pecuniary interest in partnership violated statute. Where Mr. Glenn, who is the chairman and an elected member of the Humboldt General Hospital Board of Trustees, is a member of a partnership which owns two professional office buildings located near a professional office building owned by the General Hospital and which leases space in one of its buildings to the General Hospital, the commission on ethics found that Mr. Glenn violated NRS 281.501 by failing to disclose that he had a pecuniary interest in the partnership when he voted to increase the rent charged for professional office space in the building owned by the General Hospital. In re Glenn, CEO 01-15 (2-1-2002)

No exception to requirement of disclosure even if conflicting interest is common knowledge. Where Mr. Glenn, who is: (1) the chairman and an elected member of the Humboldt General Hospital Board of Trustees; and (2) a member of a partnership which owns two professional office buildings located near a professional office building owned by the General Hospital and which leases space in one of its buildings to the General Hospital, stated that he failed to disclose that he had a pecuniary interest in the partnership when he voted to increase the rent charged for professional office space in the building owned by the General Hospital because the other members of the Board, persons present at the meeting and the general public in Humboldt County knew about his pecuniary interest, the commission stated that NRS 281.501 provides no exception with regard to disclosure and if a public officer is considering a matter before him and one of the three criteria set forth in subsection 3 of NRS 281.501 applies to him, he must make a proper disclosure notwithstanding that the information he is required to disclose may be known to those present or common knowledge. In re Glenn, CEO 01-15 (2-1-2002)

No evidence that public officer's pecuniary interest would materially affect independence of judgment of reasonable person in same position. Where Mr. Glenn, who is the chairman and an elected member of the Humboldt General Hospital Board of Trustees, is a member of a partnership which owns two professional office buildings located near a professional office building owned by the General Hospital and which leases space in one of its buildings to the General Hospital, the commission on ethics found that Mr. Glenn did not violate the abstention requirements of NRS 281.501 by voting to increase the rent charged for professional office space in the building owned by the General Hospital because: (1) there was no evidence that Mr. Glenn's pecuniary interest in the partnership would materially affect the independence of judgment of a reasonable person in his position in voting on the rent increase; and (2) the evidence indicated that the amount of the rent increase was established based on an analysis of fair market rent for the area. In re Glenn, CEO 01-15 (2-1-2002)

Disclosure, participation and abstention requirements apply to member of professional regulatory board who filed complaint with board against former associate. Where: (1) a public officer who is a licensed professional and a member of the regulatory board for that profession filed a complaint with that board against his former associate, who is in the same profession as the public officer and against whom the public officer was currently involved in litigation that had been initiated before the public officer's appointment to the board; and (2) after his appointment to the board and during the course of examining the business and practice activities of his former associate, the public officer became aware of what he

believed to be violations of the laws governing the profession by his former associate, the commission on ethics stated that the disclosure, participation and abstention requirements of NRS 281.501 apply to the public officer with regard to his involvement as a member of the regulatory board in its consideration of and action on the regulatory complaint. Abstract, CEO 01-19 (8-7-2001)

No violation where mayor no longer owned companies that had prior contractual relationship with airport authority. Where: (1) Mr. Griffin, mayor of the City of Reno, owned two companies that had contractual relationships with the Airport Authority of Washoe County; and (2) in a previous opinion, CEO 97-48, the commission on ethics stated that NRS 281.501 required Mayor Griffin to disclose his interest and refrain from participating in any future vote regarding the Airport Authority while he had an ownership interest in one of those companies, the commission on ethics found that Mr. Griffin did not violate NRS 281.501 or its previous opinion when he voted on the appointment of two members of the Board of Trustees of the Airport Authority because at the time of the votes, Mr. Griffin had sold the companies and there was no longer a contractual relationship between the two companies and the Airport Authority. In re Griffin, CEO 01-27, 01-28 (2-25-2002)

Statute does not require disclosure in absence of enumerated interests. Noting that the disclosure requirements of NRS 281.501 are affirmative in nature, the commission on ethics stated that if a public officer's independence of judgment in a matter is materially affected by one of the three interests enumerated in NRS 281.501, the public officer must disclose information about that interest and how it affects his participation or vote, or both. However, the commission opined that there is nothing in NRS 281.501 that requires a public officer to disclose that he has no such interest. In re Griffin, CEO 01-27, 01-28 (2-25-2002)

Disclosure and abstention standards apply to dual capacities as member of Board of Regents and employee of university program. Where Ms. Howard, who is a member of the Board of Regents of the University and Community College System of Nevada and an undergraduate student at the University of Nevada, Las Vegas (UNLV), wished to accept a public service intern position with a federally funded nonacademic program associated with UNLV that is available to undergraduate students of UNLV, the commission on ethics cautioned Ms. Howard that, as an elected member of the Board of Regents, she is subject to the disclosure and abstention provisions of NRS 281.501 with regard to potential conflicts between her private interests in the program's intern position and her public duties as a member of the Board of Regents. In re Howard, CEO 01-36 (2-1-2002)

City council member did not violate provision where he voted to approve recommendation to award contract to and consent agenda involving company whose corporate officer held mutual investment with public officer in other companies. Where: (1) a public officer, who is a member of a city council, and a corporate officer of Company B, a licensed contractor, each own a 25 percent investment in both Company A and Company C; (2) the public officer has no personal or financial interest in Company B and Company B has no contractual or financial relationship with Company A or Company C; (3) Company B bid on and was awarded the contract for a city project; and (4) at a city council meeting, the public officer participated in the consideration of and voted to approve the staff's recommendation to award the contract to Company B and to approve consent agendas which contained a list of checks issued by the city, including checks issued to Company B by the city for its work on the project, the commission on ethics found that the public officer did not violate the disclosure and abstention requirements of NRS 281.501 because the public officer had no personal or pecuniary interest in Company B or any personal or business relationship with the corporate officer of Company B, he was not involved in writing the bid specifications or any part of the bid process, he did not initiate or approve either of the two purchase orders or invoices for payment involving Company B or initiate, sign or approve any payment to Company B. Although the public officer voted to approve the consent agenda at two city council meetings, the commission stated that no action by the city council was required on the consent agenda and the invoice register provided with each consent agenda apparently was provided to members of the city council simply as notification of bills paid by the city. Abstract, CEO 02-04 (4-18-2002)

No violation where city council member voted to approve consent agenda which contained matter relating to company in which member had invested because no action by city council required. Where: (1) a public officer, who is a member of a city council, owns a 25 percent investment in both Company A and Company C but is not involved in the day-to-day operations of either company; (2) the city issued two purchase orders, which did not require approval from the city council, in favor of Company A for the rental of equipment; (3) at the time of the rental of equipment, the city personnel that requested the purchase orders for the rental did not know that the public officer had an interest in Company A and the public officer had not known that the city had done business with Company A; and (4) at a meeting of the city council, the public officer made a motion and voted to approve the consent agenda which contained a list of checks issued by the city, including the check issued to Company A by the city, the commission on ethics found that the public officer did not violate NRS 281.501. In addition to the fact that the public officer was not involved in the decision to purchase from Company A, did

GENERAL PROVISIONS

281.505

not initiate or approve the purchase orders in favor of Company A, did not approve the invoices for payment from Company A and did not initiate or sign the check in payment of those invoices, the commission on ethics stated that the public officer did not act on a matter involving Company A

because nothing on the consent agenda required action by the city council regarding Company A and the list of checks issued by the city that were provided with the consent agenda appeared to be simply notification of bills that the city had paid. Abstract, CEO 02-04 (4-18-2002)

NRS 281.505 Contracts in which public officer or employee has interest prohibited; exceptions.

1. Except as otherwise provided in this section, a public officer or employee shall not bid on or enter into a contract between a governmental agency and any private business in which he has a significant pecuniary interest.

2. A member of any board, commission or similar body who is engaged in the profession, occupation or business regulated by such board or commission, may, in the ordinary course of his business, bid on or enter into a contract with any governmental agency, except the board, commission or body of which he is a member, if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

3. A full- or part-time faculty member or employee of the University and Community College System of Nevada may bid on or enter into a contract with a governmental agency, or may benefit financially or otherwise from a contract between a governmental agency and a private entity, if the contract complies with the policies established by the board of regents of the University of Nevada pursuant to NRS 396.255.

4. A public officer or employee, other than an officer or employee described in subsection 2 or 3, may bid on or enter into a contract with a governmental agency if the contracting process is controlled by rules of open competitive bidding, the sources of supply are limited, he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

(Added to NRS by 1993, 2241; A 1995, 689; 2001, 1629)

NEVADA CASES.

Design proposals for university building by faculty member of university were bids under circumstances. Provisions of NRS 281.421 reflect legislative intent to prevent public employees from entering into any contract which would present a conflict between an employee's private interests and those of the general public, not just those contracts involving offers based on price. Therefore, design proposals for an architectural school building submitted by a faculty member of the University and Community College System of Nevada were bids within the meaning of the former provisions of NRS 281.481 (cf. NRS 281.505) even though the proposals did not specify price. The key element of the term "bid" is not price, but a competitive offer to contract. Nevada Comm'n on Ethics v. JMA/Lucchesi, 110 Nev. 1, 866 P.2d 297 (1994)

Faculty member of university was prohibited from submitting design proposals for university building. Former provisions of NRS 281.481 (cf. NRS 281.505), which prohibit public employees from bidding on a contract with the state if they have participated in preparing designs

or specifications for that contract, became mandatory on October 1, 1991, and were applicable to actions of a faculty member of the University and Community College System of Nevada where the faculty member, before such provisions became mandatory, had been a member of the design committee formed for the purpose of developing a design for the university building and where the faculty member had decided to enter the design competition and had formed a joint venture for that purpose 1 month before the design competition was publicly announced. Although such misconduct by the faculty member began before the provisions became mandatory, the faculty member, by submitting design proposals after October 1, 1991, engaged in prohibited acts after the provisions became mandatory. Furthermore, the actual design competition was not held until after the provisions became mandatory. Thus, the supreme court held that submission of an entry combined with the judging process was sufficient to sustain the commission on ethics' decision that the faculty member was prohibited from entering into a contract with the university to design the building. Nevada Comm'n on Ethics v. JMA/Lucchesi, 110 Nev. 1, 866 P.2d 297 (1994)

ATTORNEY GENERAL'S OPINIONS.

Proposed contract between board of county commissioners and business that is owned in part by member of board: Board not precluded from approving contract; member of board subject to discipline. Where a board of county commissioners proposes to contract with a business of which one of the members of the board is a partial owner, the board would not be specifically precluded from approving the contract, but the board's approval of the contract would place the member of the board who is the partial owner of the business in violation of NRS 332.155, subjecting him to removal from office. In addition, if the member of the board who is the partial owner of the business enjoyed a profit or compensation flowing from the contract, he would also be in violation of NRS 281.230(1) and 281.505(1). AGO 2001-19 (7-5-2001)

COMMISSION ON ETHICS OPINIONS.

Member of board of trustees for public hospital who owns electrical contracting company prohibited from bidding on hospital projects as subcontractor. Where a member of the board of hospital trustees for a public hospital is also a partner in a company that performs electrical contracting work, the commission on ethics found that NRS 281.505 would prohibit the member from bidding as an electrical subcontractor on hospital improvement projects that must be approved by the board because the member has a significant pecuniary interest in the success of his company. (See also NRS 338.141.) In re Arrien, II, CEO 99-21 (2-1-2000)

County commissioner may bid on contracts regarding which the county is not interested or affected. Where a member of a rural board of county commissioners who is the president and owner of a "widget" company desires to bid on certain contracts offered by the county commission of which he is a member, the county regional transportation commission and other political subdivisions of the county, the commission on ethics opined that the member is not prohibited from bidding on contracts offered by governmental entities outside of the county or on projects offered by the state as long as the county would not be in any way interested or affected, directly or indirectly by those contracts. (See NRS 281.230 and 281.505.) Abstract, CEO 99-27 (5-8-2000)

Contracts with a county on which a county commissioner may bid. Where a member of a rural board of county commissioners who is the president and owner of a "widget" company desires to bid on certain contracts offered by the county commission of which he is a member, the county regional transportation commission and other political subdivisions of the county, the commission on ethics stated that the commissioner may bid on contracts for supplying "type C widgets" in the county because: (1) the bidding process was open and competitive; (2) the commissioner would not be involved in opening, considering or accepting the offers; (3) the com-

missioner would not be involved in developing contract plans and specifications; and (4) the sources of supply for "type C widgets" were limited because the commissioner's company operates the only manufacturing plant in a 30-mile radius that makes "type C widgets." However, because there is local competition for manufacturing "type B widgets" and therefore the sources of supply for "type B widgets" are not limited, the commissioner may not bid on contracts with the county for supplying those "widgets" unless the commissioner's company is supplying a particular grade of "widgets" that is limited in availability and the design specifications in the request for proposals is not tailored to fit the needs of the commissioner's company. The commissioner may bid on contracts with the county for "widgets" for which the sources of supply are not limited only if the commissioner has removed himself completely from the operations of the company and does not receive any direct or indirect compensation from the company. (See NRS 281.230 and 281.505.) Abstract, CEO 99-27 (5-8-2000)

Board may select a bid from a trustee's employer pursuant to statutory exception. Where a member of a board of trustees of a district is employed as the sole representative for the local branch office of an investment firm and the investment firm is one of the candidates that submitted a bid to underwrite a bond offering for the district, the commission on ethics opined that NRS 281.230 and 281.505 did not prohibit the board from selecting the bid from the trustee's employer because the contracting process was controlled by the rules of open competitive bidding, the sources of supply were limited, the trustee refrained from participation in contract plans or specifications and the trustee abstained from opening, considering or accepting offers. The commission noted that: (1) the board made significant efforts to avoid soliciting the trustee's assistance with the bond issuance process; (2) at each step of the bond issuance process the trustee sought advice from the bond counsel to ensure there was no conflict of interest or appearance of impropriety; and (3) there was no evidence that the member or anyone else on the board attempted to tailor the requirements of the proposal to benefit the member or his employer because the specifications of the request for proposals had been made with the advice of bond counsel and the financial consultant with whom neither the member nor his employer had had previous dealings. Abstracts, CEO 99-34, 99-35 (2-24-2000)

Public officer would violate statute if company in which he has significant pecuniary interest bids on or enters into contract for which sources of such services are not limited. Where an elected public officer of a local government wishes to participate as a fifty percent equity member in a limited-liability company that would provide services to manage a program for temporary, part-time and seasonal employees of the local government, the commission on ethics opined that

the public officer would violate NRS 281.505 if: (1) the company in which he arguably owns a significant pecuniary interest bids or enters into a contract to provide services to any governmental agency; and (2) other companies exist which provide the same services. However, even if the sources of such services are limited, the commission stated that the company in which the public officer holds a fifty percent membership interest could not bid on or enter into a contract to provide services to any governmental agency unless the open competitive bidding and other conditions of subsection 4 of NRS 281.505 are met. Abstract, CEO 01-16 (6-13-2001)

Contract between county sheriff's pest control business and county library not prohibited. Where Mr. Harris, Sheriff of Elko County,

owns one of two pest control businesses in Elko County and his business entered into a contract with the Elko County Library, the Commission on Ethics found that Sheriff Harris did not violate NRS 281.230 or 281.505 because: (1) although competitive bidding was not required for awarding the contract, Elko County was authorized by NRS 332.035 to enter into the contract without advertising for bids; (2) the sources of supply in Elko County for pest control services was limited; and (3) there was no evidence that Sheriff Harris took part in developing the contract plans or specifications for the Elko County Library regarding its pest control requirements or that he solicited pest control business from Elko County. In re Harris, CEO 02-08 (8-15-2002)

NRS 281.511 Rendering of opinions by commission: Requests; determination of just and sufficient cause; notice and hearings; confidentiality.

1. The commission shall render an opinion interpreting the statutory ethical standards and apply the standards to a given set of facts and circumstances upon request from a public officer or employee who is seeking guidance on questions which directly relate to the propriety of his own past, present or future conduct as an officer or employee. He may also request the commission to hold a public hearing regarding the requested opinion. If a requested opinion relates to the propriety of his own present or future conduct, the opinion of the commission is:

(a) Binding upon the requester as to his future conduct; and

(b) Final and subject to judicial review pursuant to NRS 233B.130, except that a proceeding regarding this review must be held in closed court without admittance of persons other than those necessary to the proceeding, unless this right to confidential proceedings is waived by the requester.

2. The commission may render an opinion interpreting the statutory ethical standards and apply the standards to a given set of facts and circumstances:

(a) Upon request from a specialized or local ethics committee.

(b) Except as otherwise provided in this subsection, upon request from a person, if the requester:

(1) Submits all related evidence deemed necessary by the executive director and the panel to make a determination of whether there is just and sufficient cause to render an opinion in the matter; and

(2) Signs a statement on a form prescribed by the commission in which he affirms that:

(I) The accusation or information contained in the request is true;

(II) He did not submit the request in bad faith or with a vexatious purpose; and

(III) He understands that the commission may impose penalties upon him pursuant to NRS 281.551 if the commission determines that the accusation or information is false and was submitted in bad faith or with a vexatious purpose.

(c) Upon the commission's own motion regarding the propriety of conduct by a public officer or employee. The commission shall not initiate proceedings pursuant to this paragraph based solely upon an anonymous complaint.

The commission shall not render an opinion interpreting the statutory ethical standards or apply those standards to a given set of facts and circumstances if the request is submitted by a person who is incarcerated in a correctional facility in this state.

3. Upon receipt of a request for an opinion by the commission or upon the motion of the commission pursuant to subsection 2, the executive director shall investigate the facts and circumstances relating to the request to determine whether there is just and sufficient cause for the commission to render an opinion in the matter. The public officer or employee that is the subject of the request may submit to the executive director any information relevant to the request. The executive director shall complete an investigation and present his recommendation relating to just and sufficient cause to the panel within 15 days after the receipt of or the motion of the commission for the request, unless the panel extends the time for a period not to exceed 30 days upon the request of the executive director for good cause shown or the request of the public officer or employee. If the executive director determines after an investigation that just and sufficient cause exists for the commission to render an opinion in the matter, he shall state such a recommendation in writing, including, without limitation, the specific evidence that supports his recommendation. If, after an investigation, the executive director does not determine that just and sufficient cause exists for the commission to render an opinion in the matter, he shall state such a recommendation in writing, including, without limitation, the specific reasons for his recommendation. Within 15 days after the executive director has provided his recommendation in the matter to the panel, the panel shall make a final determination regarding whether just and sufficient cause exists for the commission to render an opinion in the matter, unless the commission extends the time for a period not to exceed 30 days upon the request of the panel for good cause shown or the request of the public officer or employee. The panel shall not determine that there is just and sufficient cause for the commission to render an opinion unless the panel has provided the public officer or employee an opportunity to respond to the allegations against him. The panel shall cause a record of its proceedings in each matter to be kept and such a record must remain confidential until the panel determines whether there is just and sufficient cause for the commission to render an opinion in the matter.

4. If the panel determines that just and sufficient cause exists for the commission to render an opinion requested pursuant to this section, the commission shall hold a hearing and render an opinion in the matter within 30 days after the determination of just and sufficient cause by the panel, unless the commission extends the time for a period not to exceed 30 days for good cause shown or upon the request of the public officer or employee.

5. Each request for an opinion that a public officer or employee submits to the commission pursuant to subsection 1, each opinion rendered by the commission in response to such a request and any motion, determination, evidence or record of a hearing relating to such a request are confidential unless the public officer or employee who requested the opinion:

(a) Acts in contravention of the opinion, in which case the commission may disclose the request for the opinion, the contents of the opinion and any motion, evidence or record of a hearing related thereto;

(b) Discloses the request for the opinion, the contents of the opinion or any motion, evidence or record of a hearing related thereto; or

(c) Requests the commission to disclose the request for the opinion, the contents of the opinion or any motion, evidence or record of a hearing related thereto.

6. Except as otherwise provided in this subsection, each document in the possession of the commission or its staff that is related to a request for an opinion regarding a public officer or employee submitted to or initiated by the commission pursuant to subsection 2, including, without limitation, the commission's copy of the request and all materials and information gathered in an investigation of the request,

is confidential until the panel determines whether there is just and sufficient cause to render an opinion in the matter. The public officer or employee who is the subject of a request for an opinion submitted or initiated pursuant to subsection 2 may in writing authorize the commission to make its files, material and information which are related to the request publicly available.

7. Except as otherwise provided in paragraphs (a) and (b), the proceedings of a panel are confidential until the panel determines whether there is just and sufficient cause to render an opinion. A person who:

(a) Requests an opinion from the commission pursuant to paragraph (b) of subsection 2 may:

(1) At any time, reveal to a third party the alleged conduct of a public officer or employee underlying the request that he filed with the commission or the substance of testimony, if any, that he gave before the commission.

(2) After the panel determines whether there is just and sufficient cause to render an opinion in the matter, reveal to a third party the fact that he requested an opinion from the commission.

(b) Gives testimony before the commission may:

(1) At any time, reveal to a third party the substance of testimony that he gave before the commission.

(2) After the panel determines whether there is just and sufficient cause to render an opinion in the matter, reveal to a third party the fact that he gave testimony before the commission.

8. Whenever the commission holds a hearing pursuant to this section, the commission shall:

(a) Notify the person about whom the opinion was requested of the place and time of the commission's hearing on the matter;

(b) Allow the person to be represented by counsel; and

(c) Allow the person to hear the evidence presented to the commission and to respond and present evidence on his own behalf.

The commission's hearing may be held no sooner than 10 days after the notice is given unless the person agrees to a shorter time.

9. If a person who is not a party to a hearing before the commission, including, without limitation, a person who has requested an opinion pursuant to paragraph (a) or (b) of subsection 2, wishes to ask a question of a witness at the hearing, the person must submit the question to the executive director in writing. The executive director may submit the question to the commission if he deems the question relevant and appropriate. This subsection does not require the commission to ask any question submitted by a person who is not a party to the proceeding.

10. If a person who requests an opinion pursuant to subsection 1 or 2 does not:

(a) Submit all necessary information to the commission; and

(b) Declare by oath or affirmation that he will testify truthfully,
the commission may decline to render an opinion.

11. For good cause shown, the commission may take testimony from a person by telephone or video conference.

12. For the purposes of NRS 41.032, the members of the commission and its employees shall be deemed to be exercising or performing a discretionary function or duty when taking an action related to the rendering of an opinion pursuant to this section.

13. A meeting or hearing that the commission or the panel holds to receive information or evidence concerning the propriety of the conduct of a public officer or employee pursuant to this section and the deliberations of the commission and the panel on such information or evidence are not subject to the provisions of chapter 241 of NRS.

(Added to NRS by 1977, 1107; A 1985, 2124; 1987, 2095; 1991, 1598; 1995, 2443; 1997, 3327; 1999, 665, 2739)

ADMINISTRATIVE REGULATIONS.

Practice and procedure governing requests for opinions, NAC 281.093-281.223

NEVADA CASES.

Supreme court may conduct de novo review of commission on ethics' construction of Nevada Ethics in Government Law; district court is obligated to give deference to construction afforded by commission. Although the supreme court may conduct de novo review of commission on ethics' construction of Nevada Ethics in Government Law (see NRS 281.411 et seq.), the district court is obligated to give deference to construction afforded by the commission. (See also NRS 281.511.) Nevada Comm'n on Ethics v. JMA/Lucchesi, 110 Nev. 1, 866 P.2d 297 (1994)

COMMISSION ON ETHICS OPINIONS.

Civil penalty imposed. Where: (1) Mr. Toto filed a third party request pursuant to NRS 281.511 for an opinion regarding members of the board of the Incline Village General Improvement District; (2) Mr. Toto failed to attend the just and sufficient cause hearing related to his request; and (3) the commission on ethics dismissed the request after hearing the testimony, considering the evidence and evaluating Mr. Toto's absence in conjunction with NAC 281.111, the commission imposed a civil penalty of \$500 against Mr. Toto pursuant to NRS 281.551, which authorizes sanctions against a person for submitting to the commission, in bad faith or with a vexatious purpose, an accusation or information that is false. Stating that the commission must not be used as a weapon to strong-arm or threaten public officers and employees and is not a forum for speculation and innuendo, the commission declared that any intentional misuse of the processes of the commission exposes the subjects of the request to undeserved public scrutiny, harassment and financial hardships and treats the commission's public mandate with contempt. In re Nakada, CEO 98-43 (5-8-2000)

No violation or imposition of civil penalty where request not filed for political purposes. The commission on ethics considered an application for imposing a civil penalty pursuant to NRS 281.551 against Mr. Paul who had filed a third party request for an opinion pursuant to NRS 281.511 regarding members of the board of the Incline Village General Improvement District based on information that other persons gave to him. The commission dismissed the request after a just and sufficient cause hearing. Although stating that Mr. Paul acted inappropriately by signing and filing an opinion request without verifying the

information, the commission determined that Mr. Paul's actions did not constitute a technical violation of NRS 281.511 because the request was not filed for political purposes and therefore, the commission did not impose a civil penalty pursuant to NRS 281.551. In re Nakada, CEO 98-44 (5-8-2000)

The amount of an award of attorney's fees and costs must equal the amount actually and reasonably incurred by the subject of a request in defending against an opinion request. On a request for reconsideration of the findings of fact and an opinion of the commission on ethics with respect to a matter in which the commission found no just and sufficient cause to proceed on the request for an opinion pursuant to NRS 281.511 and, finding that the requester violated NRS 281.525 and 281.551, imposed a monetary assessment of \$1500 against the requester for reimbursement of the attorney's fees and costs incurred by the school district in defending the subject of the request against the allegations of the request, the commission denied the request for reconsideration except with respect to the issue of the amount of attorney's fees and costs. The commission subsequently approved attorney's fees and costs in the amount of \$473.10, which, as required by NRS 281.551, is the amount equal to the attorney's fees and costs actually and reasonably incurred by the school district in defending the subject of the request based on her attorney's salary. In re Brager, CEO 99-17 (3-31-2000 & 8-1-2000)

No just and sufficient cause to proceed based on lack of evidence. Where a request for an opinion alleged that Mr. Griffin, the mayor of Reno, violated NRS 281.481(2), (3) and (6) by conspiring with Ms. Bart, the executive director of the Reno/Tahoe Airport Authority, to implement a cargo operations facility that would benefit a business owned by Mr. Griffin, the commission on ethics found no just and sufficient cause to proceed in the matter based on a lack of evidence. (See NRS 281.511.) In re Griffin, CEO 99-44 (5-31-2000)

Lack of jurisdiction to render opinion where request sought general guidance and did not provide specific facts. With respect to a request filed by a rural county district attorney for an opinion generally interpreting the statutory ethical standards with regard to school board trustees who may have familial or marital relationships with classified school district employees, the commission on ethics dismissed the matter for lack of jurisdiction pursuant to NRS 281.511 because the

commission's statutory authority to render an opinion is limited to requests submitted by public officers and employees who seek guidance on questions which directly relate to the propriety of their own past, present or future conduct and the request at issue sought general guidance and did not provide any specific facts about an individual trustee from which the commission could form an opinion. Abstract, CEO 99-48 (11-30-1999)

Lack of jurisdiction because activities covered by the Nevada Administrative Procedure Act and no specific details on the matters provided. The commission on ethics refused to exercise jurisdiction over a request for an opinion submitted by a public officer pursuant to NRS 281.511 regarding his ability to participate as a commissioner in the adjudication of: (1) matters which were pending before the commission on which he serves during his prior tenure as a staff member with that commission; and (2) matters in which the public officer previously participated while serving in an office of an entity that ap-

peared before the commission because such activities arise under NRS 233B.122 and because the commissioner did not provide details of specific matters that may come before the commission on which the public officer had substantive involvement in his prior capacities. Abstract, CEO 99-63 (2-25-2000)

OPEN MEETING LAW OPINIONS.

(N.B., this opinion was rendered by the attorney general as a guideline for enforcing the open meeting law and not as a written opinion requested pursuant to NRS 228.150.)

Open meeting law did not apply to a meeting of the commission. An agenda for a meeting of the commission on ethics which indicated that an item on the agenda would be considered in an open meeting when it was required by law to be considered in a closed meeting did not violate the provisions of NRS 241.020 because, pursuant to NRS 281.511, the meeting was not subject to the provisions of NRS ch. 241. OMLO 99-27 (4-23-1999)

NRS 281.521 Questions which advisory opinions may address; guidance on campaign practices restricted.

1. The commission's opinions may include guidance to a public officer or employee on questions whether:

- (a) A conflict exists between his personal interest and his official duty.
- (b) His official duties involve the use of discretionary judgment whose exercise in the particular matter would have a significant effect upon the disposition of the matter.

(c) The conflict would materially affect the independence of the judgment of a reasonable person in his situation.

(d) He possesses special knowledge which is an indispensable asset of his public agency and is needed by it to reach a sound decision.

(e) It would be appropriate for him to withdraw or abstain from participation, disclose the nature of his conflicting personal interest or pursue some other designated course of action in the matter.

2. Except as otherwise provided in NRS 281.477, 294A.345 and 294A.346, the commission's opinions may not include guidance to a public officer or employee on questions regarding the provisions of chapter 294A of NRS.

(Added to NRS by 1977, 1107; A 1985, 2126; 1987, 2097; 1997, 258)

NRS CROSS REFERENCES.

Campaign practices, NRS ch. 294A

COMMISSION ON ETHICS OPINIONS.

Commission only has jurisdiction to render advisory opinions on questions relating to chapter. Where a public officer who is a licensed professional and is a member of the regulatory board for that profession requested an advisory opinion from the commission on ethics regarding whether he was required by law to file a complaint with that regulatory board against his former associate, who is in the same profession as the public officer, once the public officer became aware of conduct by the former associate that the public officer

believed violated the provisions of NRS that govern that profession, the commission on ethics found that it lacked jurisdiction to render such an opinion because the public officer's question was not one of the questions for which the commission may provide guidance pursuant to NRS 281.521. However, the commission stated that it had jurisdiction to render an opinion advising the public officer whether his filing the complaint violated any provision of chapter 281 of NRS and providing guidance on the manner in which chapter 281 of NRS may impact his participation as a member of the regulatory board with respect to the complaint. Abstract, CEO 01-19 (8-7-2001)

NRS 281.525 Use of false or misleading statement regarding opinion of commission; penalty.

1. It is unlawful for any person to make, use, publish or disseminate any statement which is known or through the exercise of reasonable care should be known to be false, deceptive or misleading in order to induce the commission to render an opinion or to take any action related to the rendering of an opinion.

2. Any person who knowingly violates the provisions of subsection 1 is guilty of a misdemeanor.

3. The commission shall inform the attorney general or the district attorney of any case involving a violation of subsection 1.

(Added to NRS by 1985, 2122)

FEDERAL AND OTHER CASES.

Section is unconstitutionally vague and overbroad. The United States District Court, in an unpublished order, held that the provisions of NRS 281.525(1) do not comply with the standards set forth in *New York Times v. Sullivan*, 376 U.S. 254 (1964), and are unconstitutionally vague and overbroad in violation of the U.S. 1st and 14th amendments. The court, therefore, ordered that a permanent injunction be issued enjoining the enforcement of those provisions. *Dehne v. Avaino*, No. CV-N-99-642-DWH(VPC) (D. Nev. Sept. 19, 2001) (unpublished order)

COMMISSION ON ETHICS OPINIONS.

Request contained false and misleading information. Where a request for an opinion alleged that the district attorney's office willfully failed to act on numerous harassment and domestic violence charges that the requester had filed against her ex-husband, unlawfully refused to provide her with copies of police and sheriff reports and refused to return her phone calls, the commission found that the request and the requester's testimony contained false and misleading information to induce the commission to render an opinion in violation of NRS 281.525. The evidence indicated that the district attorney's office: (1) performed an investigation of her complaints and the results of the investigation did not support her claims and were civil instead of criminal in nature; and (2) could not locate nor did the requester have copies of any written requests for documents. As a result of finding a violation of NRS 281.525, the commission imposed a civil penalty of \$1500 on the requester and two additional assessments of \$1500 for attorney's fees incurred by two of the subjects of the request. In re Emm, Pasquale, Louie and Austin, CEO 99-01 (5-18-2000)

Request contained false information. Where Mr. Dehne alleged in requests for opinions that Mr. Griffin, the mayor of Reno, violated a previous ethics opinion (CEO 97-48 (5-29-1998)) by conspiring with Ms. Bart, the executive director of the Reno/Tahoe Airport Authority, to implement a cargo operations facility that would benefit a business owned by Mr. Griffin, the commission on ethics opined that Mr. Dehne violated NRS 281.525 by submitting opinion requests that

contained false information to induce the commission to render an opinion. The commission found that Mr. Dehne's claim that Mr. Griffin had violated the previous ethics opinion was false and that he alleged facts and circumstances in his requests that he did not verify or attempt to verify before filing the requests. As a result of finding a violation of NRS 281.525, the commission imposed a civil penalty of \$5000 and referred the matter for criminal review and potential prosecution. (N.B., in an action brought by Mr. Dehne against the commission on ethics, the United States District Court held that NRS 281.525 was unconstitutionally vague and overbroad and ordered a permanent injunction to be issued enjoining the enforcement of that section. See *Dehne v. Avaino*, No. CV-N-99-642-DWH(VPC) (D. Nev. Sept. 19, 2001) (unpublished order).) In re Griffin and Bart, CEO 99-15, 99-16 (7-7-1999)

Request contained false information. Where Mr. Overstreet submitted a request for an opinion alleging that Ms. Brager, a trustee of a school district who was also serving on a subcommittee to choose consultants for the school board, violated the Nevada Ethics in Government Law by unilaterally awarding consultant contracts, for which Mr. Overstreet had submitted a bid, without formal action by the entire board of trustees of the school district, the commission on ethics found that Mr. Overstreet violated NRS 281.525 because the allegations in his request for an opinion were false. The evidence indicated that: (1) Ms. Brager did not have the sole authority to unilaterally award contracts in her position on the six-member panel because the members of the panel privately scored the applicants and the panel's decision was unanimous; (2) Mr. Overstreet knew or should have known when he submitted the opinion request that the contracts had not been awarded yet; and (3) after the contracts were awarded by the board of trustees at a meeting which Mr. Overstreet attended, Mr. Overstreet made no attempt to amend or withdraw his opinion request. Because the commission found that Mr. Overstreet's violations were so obvious and abusive of the commission's purpose, the commission referred the matter to the district attorney for criminal review and potential prosecution. In re Brager, CEO 99-17 (7-10-1999)

The amount of an award of attorney's fees and costs must equal the amount actually and reasonably incurred by the subject of a request in defending against an opinion request. On a request for reconsideration of the findings of fact and an opinion of the commission on ethics with respect to a matter in which the commission found no just and sufficient cause to proceed on the request for an opinion pursuant to NRS 281.511 and, finding that the requester violated NRS 281.525 and 281.551, imposed a monetary assessment of \$1500 against the requester for reimbursement of the attorney's fees and costs incurred by the school district in defending the subject of the request against the allegations of the request, the commission denied the request for reconsideration except with respect to the issue of the amount of attorney's fees and costs. The commission subsequently approved attorney's fees and costs in the amount of \$473.10, which, as required by NRS 281.551, is the amount equal to the attorney's fees and costs actually and reasonably incurred by the school district in defending the subject of the request based on her attorney's salary. *In re Brager*, CEO 99-17 (3-31-2000 & 8-1-2000)

Insufficient evidence. Where a request for an opinion alleged that Mr. Kincaid testified falsely before the commission on ethics on two occasions regarding CEO 98-17 (1-21-1999 & 1-3-2000), the commission on ethics did not find sufficient evi-

dence of knowledge of falsity by Mr. Kincaid or an intent by Mr. Kincaid to induce the commission to act based on his misstatements to refer the matter to the appropriate prosecuting authority pursuant to NRS 281.525. *In re Kincaid*, CEO 99-42 (5-31-2000)

Referring matter to appropriate prosecuting attorney is the commission's only power under statute. NRS 281.525 does not establish a separate ethical violation for enforcement by the commission but, instead, addresses enforcement by the attorney general or district attorney as a criminal matter and the commission's only power under the statute is to refer a matter to the appropriate prosecuting attorney. *In re Kincaid*, CEO 99-42 (5-31-2000), see also *In re Griffin*, CEO 99-44 (5-31-2000)

No violation in context of entire testimony. The commission on ethics found that, in the context of the testimony as a whole given at the hearing on CEO 99-15 and 99-16 (7-7-1999), Mr. Griffin's one-word response did not constitute a false, deceptive or misleading statement in order to induce the commission to render an opinion or to take any action related to the rendering of an opinion and therefore, the commission declined to refer the matter to the prosecuting authority for further action pursuant to NRS 281.525. *In re Griffin*, CEO 99-44 (5-31-2000)

NRS 281.541 Specialized or local ethics committee: Establishment; functions; confidentiality.

1. Any department, board, commission or other agency of the state or the governing body of a county or an incorporated city may establish a specialized or local ethics committee to complement the functions of the commission. A specialized or local ethics committee may:

(a) Establish a code of ethical standards suitable for the particular ethical problems encountered in its sphere of activity. The standards may not be less restrictive than the statutory ethical standards.

(b) Render an opinion upon the request of any public officer or employee of its own organization or level seeking an interpretation of its ethical standards on questions directly related to the propriety of his own future official conduct or refer the request to the commission. Any public officer or employee subject to the jurisdiction of the committee shall direct his inquiry to that committee instead of the commission.

(c) Require the filing of statements of financial disclosure by public officers on forms prescribed by the committee or the city clerk if the form has been:

(1) Submitted, at least 60 days before its anticipated distribution, to the commission for review; and

(2) Upon review, approved by the commission.

2. A specialized or local ethics committee shall not attempt to interpret or render an opinion regarding the statutory ethical standards.

3. Each request for an opinion submitted to a specialized or local ethics committee, each hearing held to obtain information on which to base an opinion, all deliberations relating to an opinion, each opinion rendered by a committee and any motion relating to the opinion are confidential unless:

- (a) The public officer or employee acts in contravention of the opinion; or
- (b) The requester discloses the content of the opinion.

(Added to NRS by 1977, 1107; A 1985, 2126; 1991, 105; 1995, 2198, 2445; 1997, 640, 641)

ATTORNEY GENERAL'S OPINIONS.

Statutory exception to open meeting law provided for confidential opinions rendered by local ethics committee. NRS 281.541 provides a specific statutory exception to the open meeting law (see NRS ch. 241) which allows a local ethics committee to render a confidential opinion to an elected city councilman. AGO 94-10 (5-24-1994)

Local ethics board may not conduct closed meeting to consider past conduct of elected city councilperson. NRS 241.020 requires all meetings of public bodies to be public meetings unless otherwise specifically provided by statute. Since no statute provides a local ethics board (see NRS 281.541) with a specific exemption from NRS 241.020 to conduct a closed meeting to consider the application of a local ethics code to the past conduct of an elected city councilperson, such a closed meeting is impermissible. (See also NRS 241.030 and 241.031). AGO 94-21 (7-29-1994)

NRS 281.551 Commission authorized to impose civil penalties; filing by commission of report or proceeding concerning willful violation committed by public officer; circumstance in which violation not deemed willful; effect of code upon criminal law; judicial review; burden of proof.

1. In addition to any other penalty provided by law, the commission may impose on a public officer or employee or former public officer or employee civil penalties:

- (a) Not to exceed \$5,000 for a first willful violation of this chapter;
- (b) Not to exceed \$10,000 for a separate act or event that constitutes a second willful violation of this chapter; and
- (c) Not to exceed \$25,000 for a separate act or event that constitutes a third willful violation of this chapter.

2. In addition to other penalties provided by law, the commission may impose a civil penalty not to exceed \$5,000 and assess an amount equal to the amount of attorney's fees and costs actually and reasonably incurred by the person about whom an opinion was requested pursuant to NRS 281.511, against a person who:

- (a) Submits to the commission, in bad faith or with a vexatious purpose, an accusation or information that is false; or
- (b) Prevents, interferes with or attempts to prevent or interfere with the discovery or investigation of a violation of this chapter.

3. If the commission finds that a violation of a provision of this chapter by a public officer or employee or former public officer or employee has resulted in the realization by another person of a financial benefit, the commission may, in addition to other penalties provided by law, require the current or former public officer or employee to pay a civil penalty of not more than twice the amount so realized.

4. In addition to any other penalty provided by law, by an affirmative vote of two-thirds of the commission, the commission may impose on any person who violates any provision of NRS 294A.345 or 294A.346 a civil penalty not to exceed \$5,000. The commission shall not impose a civil penalty for a violation of NRS 294A.345 unless the commission has made the specific findings required pursuant to subsection 7 of NRS 281.477.

5. If the commission finds that:

- (a) A willful violation of this chapter has been committed by a public officer removable from office by impeachment only, it shall file a report with the appropriate person responsible for commencing impeachment proceedings as to its finding. The report must contain a statement of the facts alleged to constitute the violation.

(b) A willful violation of this chapter has been committed by a public officer removable from office pursuant to NRS 283.440, the commission may file a proceeding in the appropriate court for removal of the officer.

(c) Three or more willful violations have been committed by a public officer removable from office pursuant to NRS 283.440, the commission shall file a proceeding in the appropriate court for removal of the officer.

6. An action taken by a public officer or employee or former public officer or employee relating to NRS 281.481, 281.491, 281.501 or 281.505 is not a willful violation of a provision of those sections if the public officer or employee:

(a) Relied in good faith upon the advice of the legal counsel retained by the public body which the public officer represents or by the employer of the public employee or upon the manual published by the commission pursuant to NRS 281.471;

(b) Was unable, through no fault of his own, to obtain an opinion from the commission before the action was taken; and

(c) Took action that was not contrary to a prior published opinion issued by the commission.

7. In addition to other penalties provided by law, a public employee who willfully violates a provision of NRS 281.481, 281.491, 281.501 or 281.505 is subject to disciplinary proceedings by his employer and must be referred for action in accordance to the applicable provisions governing his employment.

8. NRS 281.481 to 281.541, inclusive, do not abrogate or decrease the effect of the provisions of the Nevada Revised Statutes which define crimes or prescribe punishments with respect to the conduct of public officers or employees. If the commission finds that a public officer or employee has committed a willful violation of this chapter which it believes may also constitute a criminal offense, the commission shall refer the matter to the attorney general or the district attorney, as appropriate, for a determination of whether a crime has been committed that warrants prosecution.

9. The imposition of a civil penalty pursuant to subsections 1 to 4, inclusive, is a final decision for the purposes of judicial review.

10. In determining for the purposes of this section whether a person submitted an accusation or information in bad faith or with a vexatious purpose, the commission may consider various factors, including, without limitation:

(a) When the accusation or information was filed with or provided to the commission;

(b) Whether and, if applicable, in what manner the person who submitted the accusation or information publicly disseminated the accusation or information before the commission determined whether there was just and sufficient cause to render an opinion in the matter;

(c) Whether the accusation or information sets forth alleged facts or details that are misleading or deceptive; and

(d) Whether the accusation or information or the conduct of the person who submitted the accusation or information:

(1) Would be perceived as annoying or harassing by a reasonable person; or

(2) Demonstrates conscious disregard for the process and procedures established by the commission.

11. A finding by the commission that a public officer or employee has violated any provision of this chapter must be supported by a preponderance of the evidence unless a greater burden is otherwise prescribed by law.

(Added to NRS by 1977, 1108; A 1987, 2097; 1991, 1600; 1993, 2244; 1995, 2446; 1997, 258, 3330, 3333; 1999, 2564, 2743; 2001, 199)

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Officers and Public Employees ⇐ 110, 116, 121, 122.

WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 197 to 208, 255 to 263.

FEDERAL AND OTHER CASES.

Provisions that authorize the imposition of a civil penalty for submitting an accusation or information that is false are unconstitutionally vague. The United States District Court, in an unpublished order, held that the provisions of NRS 281.551(2)(a) do not comply with the standards set forth in *New York Times v. Sullivan*, 376 U.S. 254 (1964), and are unconstitutionally vague in violation of the U.S. 1st and 14th amendments. The court, therefore, ordered that a permanent injunction be issued enjoining the enforcement of those provisions. *Dehne v. Avaniño*, No. CV-N-99-642-DWH(VPC) (D. Nev. Sept. 19, 2001) (unpublished order)

ATTORNEY GENERAL'S OPINIONS.

Good faith reliance upon the advice of counsel as a complete defense. The good faith reliance of a public officer upon the advice of counsel is recognized by NRS 281.551 as a defense to the element of willfulness in ethics cases. This defense could be expanded to constitute a complete defense in appropriate cases. Public officers who sincerely attempt to comply with the law by consulting with counsel, who completely disclose relevant facts to their counsel, and who receive and follow advice consistent with the Nevada Ethics in Government Law (see NRS 281.411 et seq.), should not be found in violation, even if there is some subsequent disagreement regarding the advice given. (See also NRS 281.501.) AGO 98-27 (9-25-1998)

COMMISSION ON ETHICS OPINIONS.

Willful violation found where county treasurer used county money for personal purposes. Where the commission on ethics found that Mr. Bowles, who was the clerk and treasurer for Mineral County, violated NRS 281.481 by: (1) using money from an office cash drawer even though he later replaced the money; (2) seeking a preferential room rate for attendance at a training seminar; and (3) seeking and retaining reimbursement money for the seminar that should have been paid to the county in order to make a political statement, the commission on ethics found that the violations of NRS 281.481 by Mr. Bowles were willful because a reasonable person in Mr. Bowles' place would have known that public money cannot and should not be used for personal purposes under any circumstances and Mr. Bowles deliberately and intentionally used public money as his own. As a result, the commission assessed a civil penalty of \$4,000 against Mr. Bowles. (See NRS 281.551.) In re Bowles, CEO 96-49 (6-5-1997), cited. In re McDonald, CEO 00-41 (7-13-2001)

Reaffirmation of a previous opinion finding violation and imposing civil penalty. In a previous opinion (CEO 98-17 (1-21-1999)) requested pursuant to NRS 281.477, where: (1) Mr. Brown and Mr. Bergstrom were campaigning for the office of constable of the City of North Las Vegas; (2) Mr. Brown, the incumbent, stated in a campaign flier to promote his candidacy that he was the only qualified candidate for the position and, in comparing his qualifications to Mr. Bergstrom's, stated that Mr. Bergstrom did not have any record of P.O.S.T. certification and that such certification was required to be the constable; and (3) Mr. Brown knew that the statement in his flier that the constable is required to have P.O.S.T. certification was false and that distribution to voters was timed so Mr. Bergstrom would have no opportunity to respond, the commission found that Mr. Brown violated NRS 294A.345 and imposed a civil penalty of \$10,000 against him pursuant to NRS 281.551 because he acted with actual malice and had the intent to impede the success of Mr. Bergstrom's campaign when he distributed his campaign flier containing false statements. On a rehearing of the matter, the commission found that the office of constable of the City of North Las Vegas is an elected position and although NAC 481.040 and 481.050 require appointed peace officers to have P.O.S.T. certification, NAC 481.036 exempts an elected peace officer from that requirement. Thus, the commission reaffirmed its previous opinion in this matter, including the civil penalty. In re Brown and Kincaid, CEO 98-17 (1-3-2000)

Violation of statute prohibiting use of government-issued cell phone for personal business was willful. Where the commission on ethics found that Mr. Breslow violated NRS 281.481(7) by using the cell phone issued for his use as mayor by the City of Sparks for personal business, the commission on ethics opined that Mr. Breslow did not meet the requirements of the safe harbor in subsection 6 of NRS 281.551 because he never sought: (1) legal advice from the Sparks City Attorney's office about using the cell phone for personal business or family calls; or (2) a confidential first party opinion from the commission regarding the use of the cell phone. Therefore, the commission found that Mr. Breslow's violation was willful and, in addition to the restitution that Mr. Breslow agreed to pay to the City of Sparks for his personal calls, imposed a civil penalty of \$1,000. In re Breslow, CEO 98-21 (5-23-2000)

Civil penalty imposed. Where: (1) Mr. Toto filed a third party request pursuant to NRS 281.511 for an opinion regarding members of the board of the Incline Village General Improvement District; (2) Mr. Toto failed to attend the just and sufficient cause hearing related to his request; and (3) the commission on ethics dismissed the request after hearing the testimony, considering the evidence and evaluating Mr. Toto's absence in conjunction with NAC 281.111, the commission imposed a civil penalty of \$500 against Mr. Toto pursuant to

GENERAL PROVISIONS

281.551

NRS 281.551, which authorizes sanctions against a person for submitting to the commission, in bad faith or with a vexatious purpose, an accusation or information that is false. Stating that the commission must not be used as a weapon to strong-arm or threaten public officers and employees and is not a forum for speculation and innuendo, the commission declared that any intentional misuse of the processes of the commission exposes the subjects of the request to undeserved public scrutiny, harassment and financial hardships and treats the commission's public mandate with contempt. In re Nakada, CEO 98-43 (5-8-2000)

No violation or imposition of civil penalty where request not filed for political purposes. The commission on ethics considered an application for imposing a civil penalty pursuant to NRS 281.551 against Mr. Paul who had filed a third party request for an opinion pursuant to NRS 281.511 regarding members of the board of the Incline Village General Improvement District based on information that other persons gave to him. The commission dismissed the request after a just and sufficient cause hearing. Although stating that Mr. Paul acted inappropriately by signing and filing an opinion request without verifying the information, the commission determined that Mr. Paul's actions did not constitute a technical violation of NRS 281.511 because the request was not filed for political purposes and therefore, the commission did not impose a civil penalty pursuant to NRS 281.551. In re Nakada, CEO 98-44 (5-8-2000)

Request contained false information and was submitted in bad faith and with a vexatious purpose. Where a request for an opinion alleged that the district attorney's office willfully failed to act on numerous harassment and domestic violence charges that the requester had filed against her ex-husband, unlawfully refused to provide her with copies of police and sheriff reports and refused to return her phone calls, the commission opined that the request contained false information and was submitted in bad faith and with a vexatious purpose in violation of NRS 281.551. The evidence indicated that the district attorney's office performed an investigation of her complaints and the results of the investigation did not support her claims and were civil instead of criminal in nature and that the district attorney's office could not locate nor did the requester have copies of any written requests for documents. The commission found that the request was submitted in bad faith and with a vexatious purpose because the requester: (1) was angry with the district attorney's office for its decision not to prosecute her claims against her ex-husband; (2) submitted allegations for which she did not know if she had evidentiary support and omitted pertinent information from her request and testimony; (3) was untruthful about why she chose to file an opinion request; and (4) acted in a manner that could only be perceived as annoying or harassing by a reasonable person because she was forum-shopping and did not know

if the subjects of the request had violated the ethical provisions before filing her opinion request. As a result of finding a violation of NRS 281.551, the commission imposed a civil penalty of \$1500 on the requester and two additional assessments of \$1500 for attorney's fees incurred by two of the subjects of the request. In re Emm, Pasquale, Louie and Austin, CEO 99-01 (5-18-2000)

Request contained false information and was submitted in bad faith and with a vexatious purpose. Where Mr. Dehne alleged in requests for opinions that Mr. Griffin, the mayor of Reno, violated a previous ethics opinion (CEO 97-48 (5-29-1998)) by conspiring with Ms. Bart, the executive director of the Reno/Tahoe Airport Authority, to implement a cargo operations facility that would benefit a business owned by Mr. Griffin, the commission on ethics opined that Mr. Dehne violated NRS 281.551. The commission found that Mr. Dehne's claim that Mr. Griffin had violated the previous ethics opinion was false and that he alleged facts and circumstances in his requests that he did not verify or attempt to verify before filing the requests. In addition, the commission found that Mr. Dehne submitted the opinion requests in bad faith and with a vexatious purpose because: (1) there was a long-standing enmity between Mr. Dehne and Mr. Griffin, which was public knowledge; (2) Mr. Dehne set out the facts and circumstances of his opinion requests in a deliberately misleading and deceptive manner; (3) Mr. Dehne admitted that he had submitted allegations for which he knew he did not have evidentiary support; and (4) by being openly defiant, argumentative and contemptuous of the commission, Mr. Dehne's attitudes and demeanor at the hearing demonstrated a conscious disregard for the process and procedures established by the commission. As a result of finding a violation of NRS 281.551, the commission imposed a civil penalty of \$5000 and referred the matter for criminal review and potential prosecution. (N.B., in an action brought by Mr. Dehne against the commission on ethics, the United States District Court held that NRS 281.551(2)(a) was unconstitutionally vague and ordered a permanent injunction to be issued enjoining the enforcement of that paragraph. See *Dehne v. Avano*, No. CV-N-99-642-DWH(VPC) (D. Nev. Sept. 19, 2001) (unpublished order).) In re Griffin and Bart, CEO 99-15, 99-16 (7-7-1999)

Request contained false information and was submitted in bad faith and with a vexatious purpose. Where Mr. Overstreet submitted a request for an opinion alleging that Ms. Brager, a trustee of a school district who was also serving on a subcommittee to choose consultants for the school board, violated the Nevada Ethics in Government Law by unilaterally awarding consultant contracts, for which Mr. Overstreet had submitted a bid, without formal action by the entire board of trustees of the school district, the commission on ethics opined that Mr. Overstreet violated NRS 281.551 because the allegations in his request for an opinion were false. The evidence indicated that

Ms. Brager did not have the sole authority to unilaterally award contracts in her position on the six-member panel because the members of the panel privately scored the applicants and the panel's decision was unanimous. Mr. Overstreet knew or should have known when he submitted the opinion request that the contracts had not been awarded yet and after the contracts were awarded by the board of trustees at a meeting which Mr. Overstreet attended, Mr. Overstreet made no attempt to amend or withdraw his opinion request. In addition, the commission found that Mr. Overstreet had made the allegations in bad faith and with the intent to vex Ms. Brager because: (1) Mr. Overstreet had the ability and the duty to verify whether the contracts had been awarded before he filed an opinion request, he understood the process of the selection committee and knew or should have known that Ms. Brager was not in a position to unilaterally award the contracts and Mr. Overstreet knew that the board of trustees had later awarded the contracts and he did not amend or withdraw his request; (2) by displaying his anger at the selection committee, Mr. Overstreet's behavior reflected badly on his intent to file an opinion request; (3) Mr. Overstreet submitted allegations for which he knew he did not have evidentiary support; and (4) Mr. Overstreet's failure to amend or withdraw his complaint before the just and sufficient cause hearing demonstrated a conscious disregard for the process and procedures established by the commission. As a result of finding a violation of NRS 281.551, the commission imposed an assessment of \$1500 against Mr. Overstreet for the amount of attorney's fees actually and reasonably incurred by the school district in defending Ms. Brager. In re Brager, CEO 99-17 (7-10-1999)

The amount of an award of attorney's fees and costs must equal the amount actually and reasonably incurred by the subject of a request in defending against an opinion request. On a request for reconsideration of the findings of fact and an opinion of the commission on ethics with respect to a matter in which the commission found no just and sufficient cause to proceed on the request for an opinion pursuant to NRS 281.511 and, finding that the requester violated NRS 281.525 and 281.551, imposed a monetary assessment of \$1500 against the requester for reimbursement of the attorney's fees and costs incurred by the school district in defending the subject of the request against the allegations of the request, the commission denied the request for reconsideration except with respect to the issue of the amount of attorney's fees and costs. The commission subsequently approved attorney's fees and costs in the amount of \$473.10, which, as required by NRS 281.551, is the amount equal to the attorney's fees and costs actually and reasonably incurred by the school district in defending the subject of the request based on her attorney's salary. In re Brager, CEO 99-17 (3-31-2000, 8-1-2000)

Violation of NRS 281.230 not willful. Where a county sheriff and his wife own a retail firearms business from which the county sheriff's office purchased certain weapons and the sheriff was not involved in the bid process for purchasing the weapons and erroneously assumed that the county sheriff's office had received three bids before purchasing the weapons from the sheriff's business, the commission on ethics opined that although the sheriff violated NRS 281.230 because the transaction resulted in a profit of \$4.51 to the sheriff's business, the violation was not willful pursuant to NRS 281.551 because: (1) the sheriff paid the profit to the county; (2) the transaction occurred before the issuance of a previous opinion to the sheriff (CEO 99-32 (12-6-1999)) and the county sheriff's office has not transacted any business with the sheriff's business since the issuance of that opinion; (3) the matter has been resolved pursuant to a stipulation wherein the sheriff acknowledged his violation of NRS 281.230 as a result of the transaction and agreed that as long as he simultaneously is the county sheriff and has an ownership interest in the retail firearms business, the county sheriff's office will not purchase any goods or services from the sheriff's business; and (4) the sheriff relied in good faith on the advice of legal counsel regarding the transaction. In re Harris, CEO 99-64 (6-15-2000)

Use of agency credit cards for personal expenses and failure to reimburse agency in timely manner was willful violation but no penalty imposed. Where the commission on ethics found that Mr. Keene, who was the President and Chief Executive Officer of the Reno-Sparks Convention and Visitors Authority (RSCVA), violated NRS 281.481(2) and 281.481(7) by using credit cards issued to him in his public capacity for personal expenses and failing to reimburse the RSCVA for those expenses in a timely manner, the commission determined that the violations were willful because, in light of Mr. Keene's maturity, years of executive level professional experience and the fact that he was the top executive at the RSCVA: (1) Mr. Keene should not have required instruction or training to understand the impropriety of charging thousands of dollars of personal expenses to an employer's credit card; and (2) he should have known or reasonably should have known that his practice of charging personal expenses to a governmental agency's credit card violated ethical standards. However, the commission declined to impose a civil penalty against Mr. Keene for the willful violations as authorized pursuant to NRS 281.551. In re Keene, CEO 00-11 (4-25-2002)

Failure of public officer to disclose sufficient information regarding his conflict of interest in violation of statute and previous commission opinion was not willful. Where the commission on ethics found that Mr. Cook, a member of the state board of education, violated NRS 281.501 and CEO 98-70, a previous opinion issued to Mr. Cook by the commission, by failing

to disclose sufficient information regarding his conflict of interest concerning his fiancée, who is a classified employee of the department of education, when voting on the approval of certain standards of conduct and performance which were proposed in part by a team that was facilitated by his fiancée and which the legislature mandated the state board of education to adopt, the commission found that Mr. Cook's violation was not willful because he made a good faith attempt to comply with the previous opinion issued to him by the commission, but the matter was complicated by the legislature's mandate that the state board of education adopt the standards and an opinion issued by the attorney general's office which stated that the requirements of the previous opinion issued by the commission to Mr. Cook did not apply to the matter of adopting the standards as mandated by the legislature. In re Cook, CEO 00-19 (8-11-2000)

No willful violation for failure to disclose where good faith belief that nature of issue disclosed pecuniary benefit. Where the commission on ethics found that Mr. Ferraro, who is the mayor of Boulder City, violated NRS 281.501 by failing to disclose the potential retirement benefit to him as a result of a proposed increase in his salary, the commission determined that his violation was not willful because he believed, in good faith, that the very nature of the issue itself disclosed to the public that each member of the city council, including the mayor, would enjoy a pecuniary benefit from voting for a salary increase. (See NRS 281.551.) In re Ferraro, CEO 00-26 (12-12-2000)

Guidance regarding type of conduct that constitutes willful violation of chapter for purposes of imposing penalties. Because the legislature clearly contemplated that willful acts or conduct can be found to violate NRS ch. 281 and yet not constitute a willful violation so as to warrant the imposition of penalties pursuant to NRS 281.551, the commission on ethics stated that something more than a simple willful or voluntary act is required for the imposition of penalties and the analysis must be done on a case-by-case basis, depending on the particular facts and evidence in the record. Although opining that a violation of NRS ch. 281 is not willful if it occurs as a result of carelessness, thoughtlessness, heedlessness or inadvertence or if it falls under the circumstances prescribed in the safe harbor provision in NRS 281.551(6), the commission stated that it may find that a public officer or employee's conduct is a willful violation for the purposes of the imposition of penalties pursuant to NRS 281.551 if the commission finds that the officer or employee: (1) acted voluntarily and with the specific intent and purpose to disobey or disregard the requirements of NRS ch. 281 or to do something which that chapter forbids; or (2) knew or reasonably should have known what NRS ch. 281 forbids or requires and acted voluntarily and with intention, knowledge and purpose and without justifiable excuse in

violation of the provisions of NRS ch. 281. In re McDonald, CEO 00-41 (7-13-2001), cited, In re Barrett, CEO 01-08A (2-1-2002)

No sanctions imposed based on deadlocked vote. Where the commission on ethics found that Mr. McDonald, a member of the Las Vegas City Council, violated NRS 281.481(2) and 281.501 by impermissibly advocating a matter that benefited his employer, the commission deadlocked on its vote regarding whether the violations were willful. Although Councilman McDonald was charged with knowledge of the code of ethics, including the distinction between permissible participation and impermissible advocacy, and his conduct clearly crossed the line into impermissible advocacy, the commission stated that there was no evidence that he advocated the use of public money for his own personal purposes. Noting that its deadlocked vote did not result in a bright line test to guide public officials regarding what conduct will be deemed to be willful violation of chapter 281 of NRS, the commission stated that: (1) whether conduct constitutes a willful violation resulting in the imposition of sanctions is an intensive, fact-specific inquiry and a public official whose conduct violates chapter 281 of NRS will always be exposed to uncertainty regarding whether such conduct will be found to be willful; (2) the simplistic lesson is for a public official to avoid conduct that violates chapter 281 of NRS and avail himself of the "safe harbor" protections of NRS 281.551(6) whenever any issue even remotely implicates that chapter; and (3) the code of ethics places the burden on public officers and employees to conform their conduct to the highest standards of public service, avoiding even the appearance of placing personal benefit above the public interest. In re McDonald, CEO 00-41 (7-13-2001)

Violation of NRS 281.481 not willful. Where the commission on ethics found that Mr. Barrett, who was Chief of the Clark County Facilities Division and who encouraged division employees to volunteer on their own personal time on political campaigns, violated NRS 281.481(1) because a division employee could reasonably perceive that the potential existed for Mr. Barrett to make employment-related decisions based on whether or not the employee participated in the political activity that Mr. Barrett supported, the commission determined that the violation was not willful. (See NRS 281.551.) In re Barrett, CEO 01-08A (2-1-2002)

Failure to disclose pecuniary interest not willful. Where the commission on ethics found that Mr. Glenn, who is: (1) the chairman and an elected member of the Humboldt General Hospital Board of Trustees; and (2) a member of a partnership which owns two professional office buildings located near a professional office building owned by the General Hospital and which leases space in one of its buildings to the General Hospital, violated NRS 281.501 by failing to disclose that he had a pecuniary interest in the partnership when he

281.552**GENERAL PROVISIONS**

voted to increase the rent charged for professional office space in the building owned by the General Hospital, the commission determined that the violation was not willful for the purposes of NRS 281.551 because the other members of the Board, other persons present at the meeting and the general public in Humboldt County knew that Mr. Glenn and his partner owned the buildings near the building owned by the General Hospital and leased space in one of their buildings to the General Hospital and therefore, Mr. Glenn had not believed that a formal disclosure was necessary. In re Glenn, CEO 01-15 (2-1-2002)

Civil penalty imposed for willful violations.

Where the commission on ethics found that Ms. Shangle, who was county clerk and county treasurer of Eureka County violated several provisions of NRS 281.481 with respect to a parcel of real property that she owned, the commission on ethics determined that Ms. Shangle's violations were

willful because: (1) she had been the county clerk and county treasurer for almost 40 years and therefore she knew or reasonably should have known that her conduct over the years regarding the parcel was improper; (2) the situation would not have occurred if she had not been county treasurer; and (3) she deliberately chose to place her private interests above her public duty in matters involving the parcel. Noting that NRS 281.551(6) contains a "safe harbor" with regard to willfulness, the commission found that Ms. Shangle did not meet the "safe harbor" criteria because although she consulted with a deputy district attorney regarding the parcel, she did so in her private capacity concerning private issues and not in her public capacity and she did not attempt to obtain an opinion from the commission. As a result of its determination, the commission imposed a civil penalty of \$500 against Ms. Shangle. (See NRS 281.551.) In re Shangle, CEO 01-40 (5-17-2002)

MISCELLANEOUS PROVISIONS**NRS 281.552 Acknowledgment of statutory ethical standards: Filing; retention; penalty for willful refusal to file.**

1. Every public officer shall acknowledge that he has received, read and understands the statutory ethical standards. The acknowledgment must be on a form prescribed by the commission and must accompany the first statement of financial disclosure that the public officer is required to file with the commission pursuant to NRS 281.561.

2. The commission shall retain an acknowledgment filed pursuant to this section for 6 years after the date on which the acknowledgment was filed.

3. Willful refusal to execute and file the acknowledgment required by this section constitutes nonfeasance in office and is a ground for removal pursuant to NRS 283.440.

(Added to NRS by 1999, 2730; A 2001, 2289)

NRS 281.553 Public officer or employee prohibited from accepting or receiving honorarium; "honorarium" defined; penalty.

1. A public officer or public employee shall not accept or receive an honorarium.

2. An honorarium paid on behalf of a public officer or public employee to a charitable organization from which the officer or employee does not derive any financial benefit is deemed not to be accepted or received by the officer or employee for the purposes of this section.

3. This section does not prohibit:

(a) The receipt of payment for work performed outside the normal course of a person's public office or employment if the performance of that work is consistent with the applicable policies of his public employer regarding supplemental employment.

(b) The receipt of an honorarium by the spouse of a public officer or public employee if it is related to the spouse's profession or occupation.

4. As used in this section, "honorarium" means the payment of money or anything of value for an appearance or speech by the public officer or public employee in his capacity as a public officer or public employee. The term does not include the payment of:

GENERAL PROVISIONS

281.557

(a) The actual and necessary costs incurred by the public officer or public employee, his spouse or his aid for transportation and for lodging and meals while the public officer or public employee is away from his residence.

(b) Compensation which would otherwise have been earned by the public officer or public employee in the normal course of his public office or employment.

(c) A fee for a speech related to the officer's or employee's profession or occupation outside of his public office or employment if:

(1) Other members of the profession or occupation are ordinarily compensated for such a speech; and

(2) The fee paid to the public officer or public employee is approximately the same as the fee that would be paid to a member of the private sector whose qualifications are similar to those of the officer or employee for a comparable speech.

(d) A fee for a speech delivered to an organization of legislatures, legislators or other elected officers.

5. A public officer or public employee who violates the provisions of this section is guilty of a gross misdemeanor and, upon conviction, forfeits the amount of the honorarium.

(Added to NRS by 1991, 1592; A 1999, 2745)

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Officers and Public Employees ⇐ 98.
WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 224,

242.

NRS 281.555 Purchase of goods or services by local government from member of governing body not unlawful or unethical; conditions. The purchase of goods or services by a local government upon a two-thirds vote of its governing body from a member of the governing body who is the sole source of supply within the area served by the governing body is not unlawful or unethical if the public notice of the meeting specifically mentioned that such a purchase would be discussed.

(Added to NRS by 1987, 385)

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Municipal Corporations ⇐ 231(1) to 231(4).

WESTLAW Topic No. 268.

C.J.S. Municipal Corporations §§ 988 et seq.

NRS 281.557 Governmental grant, contract or lease and certain actions taken in violation of chapter are voidable; prohibited contract is void; recovery of benefit received as result of violation.

1. In addition to any other penalty provided by law, a governmental grant, contract or lease entered into in violation of this chapter is voidable by the state, county, city or town. In a determination under this section of whether to void a grant, contract or lease, the interests of innocent third parties who could be damaged must be taken into account. The attorney general, district attorney or city attorney must give notice of his intent to void a grant, contract or lease under this section no later than 30 days after the commission has determined that there has been a related violation of this chapter.

2. In addition to any other penalty provided by law, a contract prohibited by NRS 281.230 which is knowingly entered into by a person designated in subsection 1 of NRS 281.230 is void.

3. Any action taken by the state in violation of this chapter is voidable, except that the interests of innocent third parties in the nature of the violation must be taken into account. The attorney general may also pursue any other available legal or equitable remedies.

4. In addition to any other penalty provided by law, the attorney general may recover any fee, compensation, gift or benefit received by a person as a result of a violation of this chapter by a public officer. An action to recover pursuant to this section must be brought within 2 years after the discovery of the violation.

(Added to NRS by 1991, 1593)

FINANCIAL DISCLOSURE STATEMENT

ADMINISTRATIVE REGULATIONS.

Statements of financial disclosure, NAC 281.227

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Elections ⇌ 311.1, 317.4.

Officers and Public Employees ⇌ 36(2).

WESTLAW Topic Nos. 144, 283.

C.J.S. Elections §§ 324, 329.

C.J.S. Officers and Public Employees § 46.

ATTORNEY GENERAL'S OPINIONS.

Requirement that candidates for judicial office and elected judicial officers file financial disclosure statements with commission on ethics is constitutional exercise of legislative authority. In light of the presumption of the constitutionality of Nevada statutes, the broad power of the legislature to frame and enact laws unless specifically

limited by the constitution, the absence of a specific constitutional restraint in this area and the presence of legitimate legislative objectives in pursuing public financial disclosure statements from candidates and elected officials in Nevada, there is sufficient basis to conclude that NRS 281.561 et seq., which requires candidates for judicial office and elected judicial officers, among others, to file financial disclosure statements with the commission on ethics, is a constitutional exercise of legislative authority. The separation of powers doctrine does not preclude the legislative branch from exercising its constitutional authority over public elections by requiring candidates and public and judicial officers to file with the commission on ethics financial disclosure statements for the information of the general electorate. AGO94-24 (11-30-1994)

NRS 281.561 Filing.

1. Except as otherwise provided in subsection 2 or 3, if a candidate for public office or a public officer is entitled to receive compensation for serving in the office in question, he shall file with the commission, and with the officer with whom declarations of candidacy for the office in question are filed, a statement of financial disclosure, as follows:

(a) A candidate for nomination, election or reelection to public office shall file a statement of financial disclosure no later than the 10th day after the last day to qualify as a candidate for the office.

(b) A public officer appointed to fill the unexpired term of an elected public officer shall file a statement of financial disclosure within 30 days after his appointment.

(c) Every public officer, whether appointed or elected, shall file a statement of financial disclosure on or before March 31 of each year of the term, including the year the term expires.

(d) A public officer who leaves office on a date other than the expiration of his term or anniversary of his appointment or election, shall file a statement of financial disclosure within 60 days after leaving office.

2. A statement filed pursuant to one of the paragraphs of subsection 1 may be used to satisfy the requirements of another paragraph of subsection 1 if the initial statement was filed not more than 3 months before the other statement is required to be filed.

3. If a person is serving in a public office for which he is required to file a statement pursuant to subsection 1, he may use the statement he files for that initial office to satisfy the requirements of subsection 1 for every other public office in which he is also serving.

4. A person may satisfy the requirements of subsection 1 by filing with the commission a copy of a statement of financial disclosure that was filed pursuant to the requirements of a specialized or local ethics committee if the form of the statement has been approved by the commission.

5. A candidate for judicial office or a judicial officer shall file a statement of financial disclosure pursuant to the requirements of Canon 4I of the Nevada Code of Judicial Conduct. Such a statement of financial disclosure must include, without limitation, all information required to be included in a statement of financial disclosure pursuant to NRS 281.571.

(Added to NRS by 1977, 1108; A 1985, 2126; 1987, 2097; 1991, 1601; 1995, 2199; 1999, 931; 2001, 1956, 2290)

ATTORNEY GENERAL'S OPINIONS.

Public officer who resigns prior to last 6 months before expiration of his term need not file disclosure statement. Under NRS 281.561, a public officer who resigns his office more than 6 months before the expiration of his term (or the term of his appointing authority) is no longer serving the term for which a filing is required and need not file a financial disclosure statement for purposes of the Nevada Ethics in Government Law. AGO 216 (7-12-1977), cited, AGO 88-10 (9-12-1988)

County library trustee required to file statement of financial disclosure. A county library trustee is a public officer within the meaning of NRS 281.4365 and is, therefore, required to file a statement of financial disclosure pursuant to NRS 281.561. AGO 86-6 (5-12-1986)

Candidate for office of U.S. Senator not required to file statement of financial disclosure. A United States Senator from Nevada is not a public officer for purposes of NRS 281.561 and, therefore, a candidate for that office is not required to file a statement of financial disclosure with the secretary of state for review by the commission on ethics. AGO 88-10 (9-12-1988)

County employee designated by county manager as head of department or staff director is not "public officer." Because a county employee designated by the county manager as head of a department or staff director serves at the will of the county manager and the board of county commissioners such employee is not a public officer within the meaning of NRS 281.4365 and, therefore, is not required to file a statement of financial disclosure pursuant to NRS 281.561. AGO 96-15 (5-28-1996), cited, AGO 96-33 (11-8-1996)

City manager required to file statement of financial disclosure. A city manager is a public officer within the meaning of NRS 281.4365 because the office is established by an ordinance of a political subdivision of the state and involves continuous exercise of public power, trust or duty. A city manager, therefore, is required to file a statement of financial disclosure pursuant to NRS 281.561. AGO 96-33 (11-8-1996)

Officers appointed by city manager are not required to file statement of financial disclosure. Officers appointed by a city manager are not public officers within the meaning of NRS 281.4365 because their duties are delegated to them by higher authorities. Such officers, therefore, are not required to file statements of financial disclosure pursuant to NRS 281.561. AGO 96-33 (11-8-1996)

Members of commission on professional standards in education need not file statement of financial disclosure. Pursuant to NRS 281.561, a candidate for public office or a public officer is only required to file a statement of financial disclosure if he "is entitled to receive compensation for serving in the office in question." The commission on ethics has interpreted the phrase "entitled to receive compensation" as excluding reimbursement for lodging, meals, travel or any combination thereof. Thus, the members of the commission on professional standards in education, who are entitled pursuant to NRS 391.017 to the travel expenses and subsistence allowances provided by law for state officers and employees generally, but who otherwise receive no payment for serving on the commission, are not required to file a statement of financial disclosure pursuant to NRS 281.561. AGO 2002-08 (2-22-2002)

NRS 281.571 Contents; distribution of forms; costs related to production and distribution of forms.

1. Statements of financial disclosure, as approved pursuant to NRS 281.541 or in such form as the commission otherwise prescribes, must contain the following information concerning the candidate for public office or public officer:

(a) His length of residence in the State of Nevada and the district in which he is registered to vote.

281.571

GENERAL PROVISIONS

(b) Each source of his income, or that of any member of his household who is 18 years of age or older. No listing of individual clients, customers or patients is required, but if that is the case, a general source such as "professional services" must be disclosed.

The next page is 281-93

(c) A list of the specific location and particular use of real estate, other than a personal residence:

(1) In which he or a member of his household has a legal or beneficial interest;

(2) Whose fair market value is \$2,500 or more; and

(3) That is located in this state or an adjacent state.

(d) The name of each creditor to whom he or a member of his household owes \$5,000 or more, except for:

(1) A debt secured by a mortgage or deed of trust of real property which is not required to be listed pursuant to paragraph (c); and

(2) A debt for which a security interest in a motor vehicle for personal use was retained by the seller.

(e) If the candidate for public office or public officer has received gifts in excess of an aggregate value of \$200 from a donor during the preceding taxable year, a list of all such gifts, including the identity of the donor and value of each gift, except:

(1) A gift received from a person who is related to the candidate for public office or public officer within the third degree of consanguinity or affinity.

(2) Ceremonial gifts received for a birthday, wedding, anniversary, holiday or other ceremonial occasion if the donor does not have a substantial interest in the legislative, administrative or political action of the candidate for public office or public officer.

(f) A list of each business entity with which he or a member of his household is involved as a trustee, beneficiary of a trust, director, officer, owner in whole or in part, limited or general partner, or holder of a class of stock or security representing 1 percent or more of the total outstanding stock or securities issued by the business entity.

(g) A list of all public offices presently held by him for which this statement of financial disclosure is required.

2. The commission shall distribute or cause to be distributed the forms required for such a statement to each candidate for public office and public officer who is required to file one. The commission is not responsible for the costs of producing or distributing a form for filing statements of financial disclosure which is prescribed pursuant to subsection 1 of NRS 281.541.

3. As used in this section:

(a) "Business entity" means an organization or enterprise operated for economic gain, including a proprietorship, partnership, firm, business, trust, joint venture, syndicate, corporation or association.

(b) "Household" includes:

(1) The spouse of a candidate for public office or public officer;

(2) A person who does not live in the same home or dwelling, but who is dependent on and receiving substantial support from the candidate for public office or public officer; and

(3) A person who lived in the home or dwelling of the candidate for public office or public officer for 6 months or more in the year immediately preceding the year in which the candidate for public office or public officer files the statement of financial disclosure.

(Added to NRS by 1977, 1108; A 1985, 2127; 1991, 1602; 1995, 2200; 1997, 3331; 1999, 932; 2001, 1957)

ATTORNEY GENERAL'S OPINIONS.

Public officers and candidates need only identify specifically stocks or bonds that produced 10 percent or more of their gross income in their disclosure statement. Each candidate for public office and each public officer making a statement of financial disclosure who receives

income from stocks, bonds or municipal securities is required by NRS 281.571 to identify specifically by corporate name, only those individual holdings which produced 10 percent or more of his gross income or that of any member of his household for the preceding taxable year. AGO 85-6 (6-21-1985)

NRS 281.573 Retention by commission, secretary of state, county clerk and city clerk.

1. Except as otherwise provided in subsection 2, statements of financial disclosure required by the provisions of NRS 281.561 and 281.571 must be retained by the commission, secretary of state, county clerk and city clerk for 6 years after the date of filing.

2. For public officers who serve more than one term in either the same public office or more than one public office, the period prescribed in subsection 1 begins on the date of the filing of the last statement of financial disclosure for the last public office held.

(Added to NRS by 1987, 2093; A 1991, 1603)

NRS 281.575 Candidates for public office to receive form and instructions for completion of form. The secretary of state and each county or city clerk who receives from a candidate for public office a declaration of candidacy, acceptance of candidacy or certificate of candidacy shall give to the candidate the form prescribed by the commission for the making of a statement of financial disclosure, accompanied by instructions on how to complete the form, where it must be filed and the time by which it must be filed.

(Added to NRS by 1985, 2122; A 1987, 2098; 1997, 3475; 2001, 1958)

NRS 281.581 Civil penalty for failure to disclose: Amount; waiver or reduction; procedure.

1. A candidate for public office or public officer who fails to file his statement of financial disclosure in a timely manner pursuant to NRS 281.561 is subject to a civil penalty and payment of court costs and attorney's fees. Except as otherwise provided in subsection 3, the amount of the civil penalty is:

(a) If the statement is filed not more than 7 days late, \$25 for each day the statement is late.

(b) If the statement is filed more than 7 days late but not more than 15 days late, \$175 for the first 7 days, plus \$50 for each additional day the statement is late.

(c) If the statement is filed more than 15 days late, \$575 for the first 15 days, plus \$100 for each additional day the statement is late.

2. The commission may, for good cause shown, waive or reduce the civil penalty.

3. The civil penalty imposed for a violation of this section must not exceed the annual compensation for the office for which the statement was filed.

4. The civil penalty must be recovered in a civil action brought in the name of the State of Nevada by the commission in a court of competent jurisdiction and deposited by the commission in the account for credit to the state general fund in the bank designated by the state treasurer.

5. If the commission waives a civil penalty pursuant to subsection 2, the commission shall:

(a) Create a record which sets forth that the civil penalty has been waived and describes the circumstances that constitute the good cause shown; and

GENERAL PROVISIONS

281.611

(b) Ensure that the record created pursuant to paragraph (a) is available for review by the general public.

(Added to NRS by 1977, 1109; A 1985, 2128; 1997, 3333; 1999, 934, 2746; 2001, 1958, 2290, 2924, 2931, 2932, 2934)

ATTORNEY GENERAL'S OPINIONS.

Waiver or reduction of civil penalty. The commission on ethics may waive some or all of a civil penalty due from a public officer pursuant to

NRS 281.581. (N.B., the legislature, by the amendment of NRS 281.581 in 1999, specifically authorized a waiver or reduction of such a civil penalty.) AGO 98-36 (12-16-1998)

DISCLOSURE OF IMPROPER
GOVERNMENTAL ACTION

WEST PUBLISHING CO.
Elections § 320.

WESTLAW Topic No. 144.
C.J.S. Elections § 333.

NRS 281.611 Definitions. As used in NRS 281.611 to 281.671, inclusive, unless the context otherwise requires:

1. "Improper governmental action" means any action taken by a state officer or employee or local governmental officer or employee in the performance of his official duties, whether or not the action is within the scope of his employment, which is:

(a) In violation of any state law or regulation;

(b) If the officer or employee is a local governmental officer or employee, in violation of an ordinance of the local government;

(c) An abuse of authority;

(d) Of substantial and specific danger to the public health or safety; or

(e) A gross waste of public money.

2. "Local government" means a county in this state, an incorporated city in this state and Carson City.

3. "Local governmental employee" means any person who performs public duties under the direction and control of a local governmental officer for compensation paid by or through a local government.

4. "Local governmental officer" means a person elected or appointed to a position with a local government that involves the exercise of a local governmental power, trust or duty, including:

(a) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of local governmental policy;

(b) The expenditure of money of a local government; and

(c) The enforcement of laws and regulations of the state or a local government.

5. "Reprisal or retaliatory action" includes:

(a) The denial of adequate personnel to perform duties;

(b) Frequent replacement of members of the staff;

(c) Frequent and undesirable changes in the location of an office;

(d) The refusal to assign meaningful work;

(e) The issuance of letters of reprimand or evaluations of poor performance;

(f) A demotion;

(g) A reduction in pay;

(h) The denial of a promotion;

(i) A suspension;

(j) A dismissal;

(k) A transfer;

(l) Frequent changes in working hours or workdays; or